

# ACQUIRING A HOME



CLINTON H. BLAKE, Jr.

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## ACQUIRING A HOME



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BY

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*First Edition*

TO  
MY MOTHER  
AND TO  
THE MEMORY OF  
MY FATHER



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## INTRODUCTION

**A** VERY small proportion of the property holders in the United States are architects, builders, or lawyers. The ordinary layman who purchases a home, or who purchases land and builds his own home upon it, is surprisingly ignorant of the legal relationships of client, architect, and contractor. He knows in a general way that the architect will prepare the plans and give attention to the building operation. He knows that the contractor will carry out the work of construction under some contract which will provide for the amount to be paid to him and the work which he shall do. He knows that the architect will charge a certain fee for his services, and he may know that this fee will probably be based upon a percentage basis. He knows that he will receive a deed of some kind for the property; and that the broker negotiating the sale or purchase will be entitled to receive a commission for his services.

All of these items of knowledge are general and not specific. The prospective home owner

does not know, ordinarily, what the services of the architect really cover, what the amount of the architect's charge will be, or what obligations the architect assumes as supervisor. He does not know what the respective rights of the architect and himself will be with respect to changes in the plans and specifications, extra architectural services, aid given by the architect in connection with the landscape work or the furnishing of the home, or in the event of the termination of the employment of the architect, either at the latter's instance or at the instance of the owner. He has a rather hazy understanding, if any, of the difference between the cost-plus contract, the fixed-price contract, and the cost-plus contract with an upset price. He knows little or nothing respecting the terms embodied in the construction contract of to-day, the rights of the contractor to compensation for "extras," the relations of the subcontractors to the contractor and his employer, the rights of the latter in the event of the failure of the architect properly to perform the work, the laws having to do with the lien rights of contractor, subcontractor, and materialman, the advisability or necessity for fire and liability insurance in connection with the work, and like details entering into the relationships which the building of

the home will call into existence between him and the contractors and materialmen. He does not know the proper and customary rate charged by real estate brokers for their services or what services it is necessary for them to perform before their fees become fixed and payable. He is not clear whether the fee of the broker is to be paid by the purchaser of the land or by the seller. He is probably ignorant of the fact that a broker may well earn his fee and be entitled to recover it, notwithstanding the fact that the title to the property, for some reason, does not change hands after he has negotiated the sale.

Again, the ordinary layman is woefully ignorant of the provisions which should and which should not be included in the contract of sale. In many cases, he does not know that any such contract is customary or that it is necessary to enter into any agreement prior to the passing of title. He has no knowledge of the relation which the contract of sale bears to the title which he is to receive or the immense importance which may attach to exceptions or restrictions specified in the sale contract and the bearing which these may have upon the title to his property. He has a very slight knowledge of the steps preliminary to the closing of title, the functions which title companies perform, the extent of



the protection which they give to him or the best way of availing himself of the service which they provide. He has no distinct understanding of the different kinds of deeds commonly in use or the difference between a bargain and sale deed, a quit-claim deed, and a full-covenant and warranty deed. The words "special assessments" mean little to him if he has not been the holder of real estate theretofore. He is ignorant of the basis and theory upon which they are assessed or the effect which they may have upon property adjacent to, or within the vicinity of, the local improvement in connection with which they are made. He knows that real estate is subject to taxation and that taxes are assessed upon it, but in all likelihood has no clear conception of the theory of real estate taxation or the basis on which assessments are commonly made and confirmed.

During the year 1924, I contributed to *Country Life* a series of articles which were published under the title "Acquiring the Home." The purpose of these was to outline, in a simple but reasonably comprehensive way, the relationships of the owner and home builder to his architect and to his contractor and to give to him, if possible, an understanding of the funda-

mental considerations involved in the purchase of real estate and in the building of the home. The following pages are based largely upon the foregoing articles. The latter have been revised and new material has been added to cover points of which, in the limited space of the serial publication, it was impossible to treat.

As indicated in the text, no attempt has been made to provide a guide which shall take the place either of proper architectural advice or of proper legal advice. My purpose has been rather to set before intending home owners a brief outline of the main points to which they must, or with profit may, give attention in the process of acquiring the home; to point out to them, in general, the chief considerations which they must have in mind and the course which it will be advisable for them to follow in their dealings with architect and contractor and in the purchase of real property. The book is not intended in any way as a reference work for lawyers or for the guidance of architects. The rights and liabilities of architect, owner, and contractor and the problems of the practising architect I have already had occasion to consider in their respective aspects in "The Law of

Architecture and Building" and "The Architect's Law Manual." The present work is directed solely and entirely to the ordinary home builder. It has no more ambitious aim than to give to him, if possible, a general outline of the questions which he should consider and the points which he should understand, if he would purchase or build his home with reasonable foresight and advantage.

I am quite conscious of the fact that many of the questions discussed might be treated in much greater detail. To do so would, however, materially change the purpose of the book and tend to make it a technical work of reference rather than an informal and reasonably brief discussion of the subject involved. I have tried to present the material in a sufficiently simple way, so that the layman can grasp the points which are under consideration and, without too much effort, secure a bird's-eye view, as it were, of the problem in which he is interested.

If the ordinary home purchaser to-day understood, even to a reasonable extent, the fundamentals involved in the purchase of real property and the erection of the home, a vast saving would be effected in the loss incident to disputes between architects and owners, on the one hand, and between owners and contractors on the



other hand. I have no more ambitious hope for the present work than that it may help in some measure to bring about this very desirable result.

CLINTON H. BLAKE, JR.

New York City, *March 1, 1925.*



# ACQUIRING A HOME

## CHAPTER I

### THE CHOICE OF THE HOME

**T**HE average American is a lover of home. He is determined sooner or later to acquire, if he can possibly do so, a permanent resting place for his family gods. To some, home will mean a great estate; to others, a modest cottage. All are actuated by the same urge and desire—to own their homes and to develop them in accordance with their respective tasks and needs.

The acquiring of a home is a capital investment. The investment may be large or small, but it must be made in one of two ways. The owner must purchase land and build, or he must purchase a home already built. Whichever of these methods is adopted and followed, the prospective home builder will be faced with various problems upon the proper and intelligent solution of which must depend, in very large

measure, the success of his venture. If, in acquiring his land and erecting his house, he ignores the precautions which experience has shown should be taken, he will run a grave risk of finding himself enmeshed in difficulties and faced with the prospect of substantial monetary losses. If he acts in ignorance of the many fundamental rules governing the acquisition and improvement of real property, he may shortly become convinced that he would much better have remained the occupant of a rented house than to have attempted to become an owner, without proper preparation for this new rôle and proper consideration of the best methods of solving the problems which it necessarily involves.

The purpose of the following pages is to outline as simply as possible the problems which will confront the home builder or purchaser; to sketch the pitfalls which will await him, and to show how they may best be avoided; to give to him an understanding of the danger spots in his proposed venture, and to suggest ways and means by which he may proceed with a minimum of difficulties and entanglements and with safety and satisfaction.

In pursuance of this general purpose, I shall discuss the steps which should be taken by a

prudent purchaser of land; the factors which are important in determining the location of the land, and those which are important in connection with the process of acquiring title. I shall treat of the advantages and disadvantages involved in the purchase of unimproved land, and those which characterize the purchase of land upon which a building has been already erected. I shall try to make clear the relationship of the owner to his architect, and his relationship to the latter's subcontractors.

No one can afford to purchase land without a due regard for the formalities necessary to insure his securing a good and marketable title. No one can safely spend his money in improving the land acquired unless and until he is assured that the chain of title, which is at once the corner stone and the foundation of the whole enterprise and structure, is sound and complete. No one can afford to enter into a contract of sale without an adequate understanding of its terms and of the mutual obligations which it involves. No one can safely ignore the simple but vastly important matters of title insurance, blanket mortgages, rights of way and easements, and the many other considerations upon which the proper enjoyment of the property depends. No one can intelligently enter into his contract with

his architect without a knowledge of what their relations in law really are—of the obligations which he owes to the architect, and of the obligations which the latter owes to him. No one, especially, can safely enter into a contract for the erection of his home unless he knows the advantages and dangers which lurk, for instance, in the cost plus contract, and has a general and sound conception of the relations between himself and the general contractor, and the points which, for his adequate protection, must be safeguarded and properly taken care of in planning the building contract. Many a man proceeds in blissful ignorance of all or many of these fundamental considerations; without regard to flaws in title, to charges incurred as extras, to liens and the claims of subcontractors, or to any of the comparatively few and simple—but mightily important—rules of contracts, real property, and agency, which are involved at every step of the building operation.

It will be my purpose to treat these various points in as nontechnical a way as possible—to present them not so much from the legal point of view as from the point of view of the average layman. I shall hope to give to the latter a sufficient understanding of the basic principles involved so that he may know when and on what



points to seek advice, and what general course he should follow to launch his home acquirement project safely and without unnecessary difficulties or loss.

It is evident that when one has decided to purchase or build a home, the first point to be considered and decided is that of location. Whether or not a special locality may appeal is, naturally, a matter of personal taste with which we are not here concerned. Aside from the question of whether the proposed location appeals to one as generally attractive in appearance, environment, and the like, one must consider various other practical factors in making a definite choice. If expense is not a consideration, many of these factors may, perhaps, be disregarded. In the case of the ordinary home builder of moderate means, however, they should receive the consideration to which they are entitled.

In this day, when we all are bedevilled with taxes of various degrees of unpleasantness, the purchaser may well give thought to the valuations, tax rates and tax policies of the community which he is considering.

In the first place, he might profitably ascertain whether there is a state income tax. More and more the states are coming to adopt this

form of taxation. Whatever may be its merits it seems reasonably clear that, once it is adopted as a state policy and means of raising the necessary state revenues, it is likely to remain permanently. It is a very simple matter for a state legislature, given to a spending rather than to an economy programme, to increase the basic income tax rate and so raise the funds required. The result often is that, as years go by, the rate mounts steadily until a tax, which in the beginning was low, has assumed eventually the proportions of a burden. This may be especially true if the unfortunate householder earns his living in one state and lives in another. If both states have income tax laws, he may well find the division between his residence and business location an expensive one. The state income tax laws will doubtless contain provisions aimed at preventing double taxation, but an increased tax burden will usually be felt none the less. It is well, therefore, before you purchase real property, to consider the tax system which is in force in the state of your intended residence, and the reputation in general of that state for sound and conservative fiscal policies.

Another matter which may profitably be inquired into is the educational policy and machinery of the state. The states, generally, now



have State Departments or Boards of Education, charged with formulating their respective educational policies and, in large measure, the policies of and the limitations upon the local Boards of Education throughout the states.

The average man does not realize to what extent state legislatures are prescribing required subjects for study in our public schools. Each year scores of bills are introduced making this subject or that subject a requirement in all public schools of the state where they are proposed. Many are lost, but many pass and become law. Some are sound. Others reflect the personal whim or belief of some legislator, rather than the reasoned conclusion of those qualified to judge in educational matters. The result is that some states are approaching, or have in fact reached, the point where local boards of education are compelled to sacrifice the proper presentation of many subjects in order to include in the school curriculum the subjects which, under the state statutes, must be included. The policy and the tendencies of the state governments in educational matters are thus reflected directly in the public schools throughout the states. No matter how excellent a local board of education may be, its work will be greatly hampered unless the state laws under which it acts are sound and

are framed with a proper understanding of the necessities and problems of present-day education.

Having found that the state policies in taxation and education are sound, the intending home owner should next consider the soundness of the tax and educational policies in force in the locality where he proposes to live. The state fiscal administration and the state educational administration may be alike admirable. A resident of one of the towns of the state may nevertheless derive very cold comfort from that fact, if the municipal administration is unsound and improvident, and the local school board is composed of men and women lacking in that broadness of outlook and in that mental equipment which their work demands.

To the average owner of real property the taxes to be paid upon it are, of course, of special importance. In a small community, faced with no special problems of police protection, street maintenance, large school accommodations, and the like, taxes will usually be found to be reasonable and not unduly burdensome. As the community grows in population and corresponding needs, however, the taxes will necessarily increase. The questions for the prudent man to determine are: whether the taxes in the commu-

nity which he finds appeals to him are reasonable in proportion to the facilities and improvements which the town provides; whether the local government has generally a deserved reputation for sound business sense and a proper balance between the progressive tendencies, necessary to the best development of the community, and those conservative qualities which will act as a balance wheel and prevent any foolish or extravagant local taxes or expenditures of public moneys.

It is well to do something more than consider the local administration in power at the moment. It may be excellent or very bad and yet wholly fail to reflect the normal tendencies and policy of the town. The important thing is the general reputation of the latter for public spirit and for good sense, the character of its citizens, and the quality of the government which, on the average, it has enjoyed and which it may normally be expected to enjoy in the future.

There is a clear distinction which must always be borne in mind between property valuations and the tax rate. The thing in which the property owner is interested is the amount of tax which he will be actually called upon to pay. The tax rate may be low, and yet, if the property valuation on which it is figured is high,

the resultant tax may be high. Conversely, if the property valuation is very low, the rate itself may be high and the tax still remain low. Ordinarily the assessed valuation is far less than the actual property value. In good practice it should bear a proper relation to the tax rate. The board of assessors should be composed of men of good judgment, a sense of fairness and responsibility, and a requisite, if not an expert, understanding of property values and of sound tax practice.

In the matter of education, the personnel of the local school board is of special importance. Here, as in tax matters, it is the general reputation of the community with respect to its educational policies over a period of years that is really important. Are the school facilities adequate or are schools being built on an extravagant or unnecessary scale? Are those charged with the direction of the schools broad-minded and alive to the needs of the community and to the best methods of modern education? Good schools are to-day essential in any progressive community. On the other hand, there are few, if any, phases of municipal government which involve so large an expenditure. If the tendency is to build on an extravagant scale the



result will soon be unpleasantly reflected in the tax valuations and rate.

A constructive forward-looking policy, with adequate but not excessive facilities and good teachers, under the direction of a Board of Education alive to the needs of the community and at the same time appreciative of the cost of modern municipal government, is the situation to be desired. Too many educational boards proceed without regard to the other needs of the community. Too many governing bodies of municipalities proceed without proper regard to the recommendations of the body in which is vested the responsibility for proper local educational methods and policies.

Another matter into which the intending home builder may profitably inquire is the character of the public utilities which serve the community where he contemplates living.

The necessity of good transportation facilities is, of course, elemental. The existence of other public utilities, adequate and available, is, however, of almost equal importance. Water, sewerage facilities, electricity, and gas are all important factors. The character and availability of these latter necessities vary greatly in different localities. In most the sewerage system, for

instance, is operated by the municipality, and frequently the same is true of the water supply. In many cases, however, the water is furnished by private capital, and in some the sewerage system is likewise under private ownership. If the utilities are controlled and operated by the municipality, the local taxes may include the service rendered, or a separate charge may be made. If the service is rendered by a private corporation, there will be a separate charge, without question. Electricity and gas are reasonably sure to be privately controlled and operated.

Aside from the variation in expense between municipal and private ownership, the character of the service rendered may well be investigated. Many towns, apparently progressive and otherwise attractive, have wholly inadequate public utility service. When one is choosing a site for a permanent home, one may well give a few hours' time to an investigation of its lighting, sewerage, and water resources, to make sure not only that they are efficient and adequate at the moment, but that there is a reasonable expectation that they will remain so in the future.

If they are antiquated and inadequate, it is certain that in a few years' time an enlargement of the present systems or entirely new systems will be necessary. This means real expense, which

will fall chiefly upon the shoulders of the property holder, and be directly and most unpleasantly reflected in increased taxation and local assessments.

Proper and up-to-date public utility service is to-day so general that there can ordinarily be no need for anyone to settle in a locality where adequate facilities of this character are lacking.

Another factor for consideration is the existence, or non-existence, in the general vicinity, of building and loan associations, banks, or trust companies, if the assistance of institutions of this character is to be sought to help finance the building operation. A good building and loan association of liberal policy and with sound management may be of tremendous help. Other things being equal, it is just as well to be located where this help can be made available.

Inquiry into all of the foregoing factors is simple, and the prudent home builder will not grudge the few additional hours required to secure the information necessary to give him a full and comprehensive idea of the advantages, and of the disadvantages, which characterize the community which he has under consideration.

Both the necessity for and the adequacy of police protection differ greatly in various localities. As a general rule, the nearer one is to a



large city the more need there is of an adequate and efficient police system. The man who is fortunate enough to live at a decent distance from the city's roar will find, quite possibly, that the local constable will be sufficient to uphold the majesty of the law and discourage evil-doers. The ordinary suburban town, however, has a far more serious problem. It must expect a certain overflow of crime from the nearest city. It will have to meet also the increasingly difficult problem of traffic regulation and control. To meet these situations a police department of reasonable size and good training and morale is a necessity.

Many towns have adopted, with marked success, the idea of placing some retired city police officer in charge of the organization and direction of their local police. Others have found it possible, and in many cases more advantageous, to develop their police organizations exclusively from local talent. The important thing is, of course, the results secured. If the community has a police force of adequate size and modern training and equipment, with good morale and under intelligent and honest direction, it will undoubtedly be able to meet any ordinary requirements. The cost of efficient police protection may run into substantial figures. It is well

to know in advance whether this protection has been already provided, or is something which must be attended to in the future with a certain resultant increase in municipal expense and taxes.

Until a comparatively few years ago, adequate fire protection in country or suburban communities was practically, if not wholly, unknown. As the modern system of expert fire prevention and protection has been developed, this condition has been changed. To-day, in town after town, one will find a small but adequate fire department of paid men, properly trained and properly equipped. If you are locating in a very small town or village, you will doubtless be forced to depend on the old-time volunteer brigade. If you contemplate living in any one of the thousands of charming suburban towns of somewhat larger size, however, you need have no difficulty in finding one where a fire will not necessarily mean a total loss. Many of the local fire departments have been organized and trained by retired city firemen and are quite prepared and able to cope with any ordinary fire in the community. It is a real comfort, as you build and occupy your home, to know that, in case of fire, you have better than an even chance of saving your house and its con-

tents. Even when the insurance company does not try to convince you that the fire and water have improved rather than injured your property, and pays you an amount sufficient to cover your loss, the payment of the insurance money is a poor substitute for the home which you had built and loved. Choose, if you can, a community where you will have at least a reasonable chance of preventing the destruction of a home which it has taken years of planning and effort to acquire.

When the community has been investigated and decided upon, the next consideration is the selection of the building site and of the property to be acquired. Many elements are here involved and must be carefully weighed and considered. Just as it is important that lighting, water, and sewerage facilities be generally available in the community, so it is important that these improvements be available in that special section of the town where the property is to be purchased and the home built. It is small consolation to know that Mr. Jones at the south end of the village has all improvements at his door if you, at the north end, are a goodly distance away from any of them.

This is essentially the day of real estate developments. Some are soundly conceived and car-

ried out. Others are full of pitfalls for the unwary or unprepared purchaser. In any one of the score of suburban developments which surround each of our large cities you will find property being sold and houses erected, while the streets on which the houses face are nothing more than superficially cleared spaces, and no gas, water mains, or electricity are yet at hand.

If the surroundings are beautiful and the house under consideration appeals to him, the thoughtless purchaser may, and in repeated instances does, enter into a contract of sale with all too little regard for the availability of practical necessities; with a sort of blind trust that somehow, some day, these will be provided, in time to serve him and to make the occupancy of his home practical and comfortable.

If your home is located some distance from the water and sewer mains, you will find it a costly proposition to bring these conveniences to your door. Unless, indeed, you have a sufficient number of neighbours who will share the service with you, the expense may be prohibitive or the managers of the utility companies may refuse to extend their service for you alone on any terms.

If some special spot has such an appeal that you decide to locate there, regardless of the nearness of these necessities, you will of course



do so. You should do it, however, with a clear understanding that you may be compelled to get along for years without them, and not hypnotize yourself into the belief that they will be in some way providentially provided. There are so many attractive sites available, where proper facilities are at hand, that the ordinary purchaser should have no need to purchase land which is inaccessible to them.

Both in respect to public utilities and in respect to other public improvements, such as sidewalks, curbing, and grading of streets, the home builder may profitably give thought to the subject of special assessments. It is surprising how many capable business men, not accustomed to dealing with real property, are wholly or largely ignorant of this subject. To them, the words "special assessments" have merely a vaguely familiar sound, but no special connotation. Certainly they do not realize how much dynamite they may contain, or how expensive they may prove to be.

When an improvement, such as a sidewalk or a gutter or the laying out and curbing of a street, is put through, the property adjoining the improvement and likewise the property, generally, in the immediate vicinity is naturally benefited. The cost of this benefit is not necessarily borne

by the town as a whole. In the majority of cases the cost is apportioned among the near-by property owners and assessed in theoretically—not always actually—correct shares against their respective properties. This charge so made is called a special assessment.

It will readily be seen that these assessments may run into real money. Suppose, for instance, that you have purchased property fronting on an unimproved road. The other property owners may decide to have the road improved and taken over by the town. The work will involve surveys, grading, macadamizing, curbing, and gutter work and very likely the laying of water, sewer, and lighting mains and conduits. An operation of this kind is expensive. The share of the cost assessed against your land may so add to the cost as to make it out of all proportion to your original budget and estimates. When possible, it is much preferable to settle where improvements are already reasonably complete and local assessments not likely to be troublesome.



## CHAPTER II

### THE REAL ESTATE BROKER

**I**N the majority of cases, in the purchase of land, improved or unimproved, the services of a broker will be employed. Either the seller will enlist the help of the broker or the purchaser will do so. It is important, in any event, that the intending purchaser understand the more fundamental of the rules having to do with the employment of the broker and with his rights to compensation.

There is a very general impression, I fear, on the part of most laymen, that the broker in a real estate transaction does not earn his commission unless and until the deal is actually consummated and title passed. In the absence of a specific agreement to this effect this is not ordinarily the case. As a general rule a broker is held to have earned his commission, and to be entitled to recover it, when he has brought the parties together and they have agreed on the terms of the purchase and sale. The fact that thereafter, for some reason not the fault of the

broker, the sale is not consummated does not ordinarily affect his right to recover his commission. He is considered to have earned this commission when the minds of the parties met—when they were in agreement on all the essential terms of the transaction.

While this rule of law is fair and reasonable, it is in many cases likely to result in hardships to the purchaser or to the seller, as the case may be. I have in mind a recent case in which a broker brought together the owner of the property and an intending purchaser. The parties had numerous conferences and discussed in general the terms on which the sale was to be made. The owner, who had employed the broker, claimed, however, that he was not satisfied on all of the terms and that he did not agree to all of the conditions proposed by the purchaser. The broker claimed that the parties had, in fact, agreed upon all essential terms and contradicted the claim of the owner on this point. Unfortunately for the owner, the proposed purchaser sided with the broker and supported the latter's contention. The result was that the owner, who had not in fact considered that the deal was closed, was nevertheless legally adjudged liable to the broker for his commission and forced to make payment of it to him.

It must not be supposed, however, that a broker can recover a commission unless there has been some agreement with respect to his employment. This agreement need not be in writing, nor need it be what is ordinarily termed an express agreement, that is, an agreement in specific specified terms. It may be implied as well as direct. An agreement however, direct or implied, there must be, if the broker is to secure a recovery. For example, where a broker comes to an owner of property and states that he has some customers who are interested in purchasing the property, and nothing is said with respect to the broker's commission, it has been held that the broker acted under these circumstances for the purchaser and not for the owner, and that he could not recover his commission from the latter. If the owner, however, employs the broker and the latter produces a purchaser ready to purchase the property on the terms which the owner has authorized, the commission is earned. The fact that the owner does not then carry through the sale does not defeat the right of the broker to his compensation.

If an intending purchaser or seller desires really to protect himself from any misunderstanding with respect to the broker's compensation, he can do so by a specific agreement cover-

ing the terms on which the compensation is to be paid. A wise precaution, and one which will remove the danger of disputed claims for brokerage, is to insert in the agreement with the broker a provision to the effect that no brokerage shall be earned, or paid, unless and until the sale actually is consummated and title passed and closed. A provision of this kind is entirely proper and the broker will ordinarily gladly accede to it, if it is proposed in the first instance, when he is employed. It will obviate a possible future claim by him that he caused the minds of the parties to meet, and that the sale thereafter failed through no fault of his and that his commission was therefore earned. It is obvious of course that, in any event, where the sale fails as the result of some fault of the broker, the latter cannot claim his commission even if he has brought the parties together in substantial agreement prior to that time. He cannot be allowed to recover a profit on a transaction which has failed of consummation by reason of some act or omission on his part.

In many instances, the broker will secure an option for his principal for a short specified period. The securing of the option cannot be considered as tantamount to a closing of the deal, so as to entitle the broker to his commission.



The option is merely a firm offer for a specified period. It does not ripen into a contract unless and until it is accepted, and exercised, by the party to whom it is granted.

The broker, with respect to the obligation to act in good faith, is in the same position as any other professional adviser or agent. His employer has the right to expect that he will act in absolute good faith, that he will give to his employer the benefit of all information which he has, and will use his best efforts in his employer's interests. It follows from this that the broker cannot properly act where he has a personal interest in the matter, aside from his commission, unless his principal is advised of the facts and agrees to them. For the same reason, he is not entitled to accept a commission from both the seller and the purchaser without the consent of each of them. To allow him to do so would be to place him in the position of trying to represent two employers with conflicting interests.

It has been claimed by some that the purchaser himself must pass on the value of the property which he is acquiring and that a false statement, by the seller, of the value of the property will not necessarily give the purchaser the right to rescind the sale and refuse to take title.

This is a rather dangerous doctrine, both in law and in morals. It is undoubtedly true that, in a case where it is impractical for the purchaser to ascertain the exact facts with respect to value, upon investigation, or where these facts are peculiarly within the knowledge of the seller, or the seller prevents an adequate investigation by the purchaser, the latter can rescind the contract as the result of false representations on material points. Certainly, the better practice would seem to be to consider that any deliberate false representation by the seller as to value, or any representation as to value which he may make innocently but which is inaccurate and upon which he knows the purchaser relies, should be sufficient to enable the latter to rescind the deal.

In this connection a distinction must be drawn between representations which are merely expressions of the opinion of the seller and unqualified representations of fact by him. If he tells the purchaser that he considers the property worth \$25,000, this is a matter merely of his opinion. It is incumbent on the purchaser to make his own investigations and to arrive at his own conclusion as to the accuracy of the value given. On the other hand, if the seller states that the property is worth \$25,000 and is assessed for that amount, or that he has had a firm offer



of \$25,000, or that it can be readily sold for that sum to others, the purchaser, if these representations are false, should be allowed to terminate his dealings with the seller and withdraw from the proposed purchase without any obligation to the seller.

Inasmuch as the real estate broker is the agent of the person who employs him, any material misrepresentations by him, whether made wilfully or innocently, will bind his principal so far as the right of the purchaser to rescind is concerned. If the broker, therefore, employed by the seller, misrepresents to the purchaser any material facts, the purchaser can refuse to proceed further and can rescind his agreement to purchase. If the broker makes no misrepresentations, however, the fact that the seller becomes dissatisfied with the financial responsibility of the purchaser and refuses to proceed with the sale, after a preliminary understanding on all material facts has been entered into, will not defeat the right of the broker to his commission.

As is true in all other matters of contract in transactions involving real property, it is important that any agreements between the purchaser or the seller, and the broker, be reduced to writing. Where this is not done, the agree-

ments may be void under laws providing that agreements with respect to real property must be reduced to writing or, with perfect good faith on the part of both the broker and his principal, the terms of the broker's employment may be in dispute and serious loss and misunderstanding result. A written memorandum, setting out the terms upon which he is to proceed, the limits of his authority, the conditions upon which the payment of his commission is to be predicated, and the like, will obviate any possible misunderstanding on these points and will protect employer and broker alike.

## CHAPTER III

### THE CONTRACT OF SALE

**H**AVING decided upon the community and the site which you prefer, and negotiated the terms of sale, the next step is the contract of sale and taking title. In the majority of cases the purchaser signs the contract of sale in a somewhat summary and off-hand manner. It is well to remember that this contract is the basis of the whole transaction. When it comes to the closing of title and the delivery of the deed, the contract of sale will control.

So long as the seller offers you a title in accordance with the contract of sale, he is doing all that you can legally ask him to do. If the contract of sale fails to provide for a warranty deed, you will not be able to insist upon receiving one. If it provides that the property is to be taken subject to certain restrictions or mortgages or other encumbrances, you will be forced to accept title accordingly. If it specifies a certain description of the land, this is the description

which the seller will be entitled to use in drafting the deed. If it specifies a certain apportionment of taxes or assessments or water charges, it will be necessary to apportion them as agreed. If it provides for the payment of a specified broker's commission, the parties will be bound to pay the commission in the amount and manner specified. If it provides for a purchase money mortgage without the right in the purchaser to make payments in reduction of the principal, before the maturity date, he will not be able to insist that the mortgage given on the closing contain such a clause.

All of the foregoing items and many more similar to them are of importance—some of vital importance—to the purchaser. They affect the rights of the purchaser and the title which he receives. The important point to remember is that the purchaser cannot be too careful in entering into the contract for the sale and purchase of the land. It is usually a rather unimportant looking document. To one not initiated into the mysteries of real estate law, it may appear entirely harmless and unobjectionable, when in fact it contains clauses which directly affect the land to be conveyed and the title which the purchaser is to receive.

By statute, usually, a contract to convey real

property must be in writing, and in practice this is the almost universal rule. The agreement also is usually under seal. Where an instrument is sealed, its consideration, or rather the possible lack of consideration, for its execution by either party cannot be readily questioned, and it is somewhat more difficult for either party to claim successfully thereafter that any of its terms have been altered or revoked.

The mutual promises which such an instrument necessarily contains are, in themselves, ordinarily a sufficient consideration on each side. It often happens, however, that one of the parties may endeavour to show that the terms, as embodied in the written agreement, have been changed by a subsequent conversation or verbal understanding. It is a general rule of law that the terms of a written instrument cannot be varied or changed by what the lawyer calls parole evidence, that is to say, by evidence of an alleged oral agreement or conversation inconsistent with, and which changes the terms of, the written contract. There is another rule of law, however, which admits evidence of a second agreement which is collateral to, but does not change the terms of, the original agreement.

It is well to remember that anything which opens the door to a modification or enlargement



of the terms of the original contract by oral testimony is dangerous. If the contract in writing has been made and delivered, the safe rule is to insist that any subsequent understandings with respect to its subject matter be in writing also. When this rule is not followed, but the parties cover some additional details by conversation merely and make no memorandum of them in writing, the chances of a misunderstanding resulting are greatly enhanced. This does not presuppose necessarily any bad faith or deliberate attempt to mislead on either side. Recollections of an oral agreement often differ. When this is the case regrettable misunderstandings and difficulties are reasonably sure to follow. If a memorandum in writing is available for reference the possibility of misunderstanding is largely done away with. A reference to the writing will refresh the memories of the parties and determine the issue between them. Each will be satisfied, and neither will have a mental reservation with respect to the good faith or intentions of the other.

If, therefore, after one's contract has been signed, additional points arise which one desires to cover, or any modification or enlargement of the written terms is suggested, one should see to it that the new agreement is reduced to writing



and executed with the same formality as the original agreement. It has often been held that a written contract can be varied in its terms only by another written contract, executed with the same legal formalities as was the original. To guard one's self on these points is a simple matter and one well worthy of a little care and attention.

If a legal paper is to be recorded, it is necessary that it be acknowledged before a notary public or other official authorized to take acknowledgments by the laws of the state where the acknowledgment is taken. Contracts of sale are often not acknowledged, and when there is no possible need of recording the instrument this formality may be dispensed with. Here again, however, it is difficult to discount the future. In case of disagreement and a refusal, for instance, by the seller to convey, it may be of importance to the purchaser to be able to record his contract. The careful and conservative course, therefore, is to have the instrument acknowledged in the ordinary course when executed. If no acknowledgment of it by the parties is made, but the execution is duly witnessed and the witnesses sign, what is known as an acknowledgment by a subscribing witness may be added. This will have the same practical effect as if the

parties had acknowledged the execution personally. In such case the subscribing witness simply acknowledges that he acted as witness, knew the parties, and saw them execute the agreement.

Passing now from the formalities of execution to the terms embodied in the contract, the first important provision is the description of the property to be conveyed. As indicated at the opening of this chapter the description which is contained in the contract of sale is the description which will control. The seller, if he conveys to the purchaser land described in accordance with the description given in the sale contract, will be doing all that can be required of him so far as this term of the transaction is concerned. It is of manifest importance, therefore, that the description given be accurate and complete. If it is given only in very general terms, as is often the case, and a more detailed description is desired in the deed, the contract should contain a proviso that the deed description shall be by metes and bounds. Oftentimes the description in the agreement of sale is taken from the deed held by the seller. When this is done it will probably be sufficiently detailed and complete. If no survey of the property has been made, and hence no description by metes

and bounds is available, the contract may recite that a survey is to be made and that the deed description shall conform to it.

In many cases the description in the old deed, held by the seller, will simply refer to the property as bounded on the east by the lands of John Smith, on the south by the lands of Edward Jones, etc. When this is the case, and a similar description is to be inserted in the deed given by the seller, care should be taken to check the accuracy of the reference to the adjoining owners. Some of them may well have died, or conveyed to others, since the old deed was executed. If the land on the east formerly held by John Smith has been conveyed by him to another, or if John Smith has died and his son now owns the property, the correct name of the present adjoining owner should be given rather than the name of John Smith. A description of this character, depending for its validity only upon the reference to the adjoining properties, is dangerous, because it presupposes the correctness of the allegations as to the identity of the owners of these properties, and the validity of their titles.

The safer plan is to follow the description given in a properly filed map or survey and, in addition, to identify the property by a recital

that it is the same property heretofore conveyed to the seller by the man from whom he purchased, with a reference to the date and recording data of the deed under which the seller himself derived title. For instance, the description in the contract may contain the clause, "being the same premises heretofore conveyed to the seller by Richard Roe and Mary Roe, his wife, by deed dated October 4, 1920, and recorded in the office of the Clerk of Manhattan County, state of New York, on October 5, 1920, in Liber 50 of Deeds at page 600."

Following the description will come the terms of sale. If the sale is to be a cash transaction, a simple statement that the price is \$20,000, payable in cash, \$500 on the signing of contract, and the balance on the delivery of the deed, will suffice. If, however, a purchase money mortgage is to be given or payment made in instalments, care must be taken to see that the contract properly defines the intentions of the parties. The length of time for which the mortgage is to run and the rate of interest should be given. It is always advisable, also, from the point of view of the purchaser, to reserve the right to pay off the mortgage prior to its maturity date. Ordinarily the holder of the mortgage will be glad to have this done. When, however, a mortgage



is bringing in a good return and no equally attractive investments are available, he may be unwilling to allow the mortgagee to anticipate payment of the principal without the payment, at the least, of an additional consideration. If the purchaser wishes to make sure that he may pay off the principal, in whole or in part, in advance of maturity, he should see to it that the contract of sale provides that the bond and mortgage to be given shall contain clauses allowing this to be done.

In considering the contract of sale, submitted for his approval and signature, the purchaser should be particularly careful to note any provisions to the effect that the property is conveyed subject to any specified conditions. Any such provision in the contract means that the deed will convey title subject to the same defects, or encumbrances, as those specified in the sale contract. These may or may not be important, but it behooves the purchaser to proceed with special care when he encounters the words "subject to."

If it be stated that title is subject to a specified mortgage, it means that such a mortgage is outstanding and is a lien on the property. In such case it should be provided that a portion of the purchase price, equal in amount to the amount

of the mortgage, shall be paid by taking title subject to the mortgage. If for instance the price is \$15,000 and there is a \$10,000 mortgage, the purchaser pays the \$15,000 by paying \$5,000 in cash and \$10,000 by taking the property subject to the mortgage.

It is well to note, also, the difference between taking title *subject to* a mortgage, and *assuming* the mortgage. In the former case, if you fail to pay the sums due under the mortgage, the property can be sold on foreclosure by the mortgagee, but he will not be able to hold you liable for any deficiency between the amount due and the sum realized on such sale. If, however, you have assumed the bond and mortgage and then are in default, the holder of the mortgage can hold you liable, under the bond which you have assumed, for any deficiency. Usually the purchaser is only asked to take subject to a mortgage. He should not assume the obligations of the bond and mortgage unless there are special and exceptional reasons for his doing so.

If the contract specifies that title is to be taken subject to certain restrictions, or rights of way, or agreements, be sure that you understand exactly what these are before you sign. Often a contract will say that title is to be taken subject to the restrictions contained in a certain prior



deed, to which reference is made. When this is the case, look up the deed referred to and check the extent and effect of the restrictions which it contains before proceeding further. Remember, always, that your deed will follow the contract of sale and that you will get no broader or better title by the deed than that which the contract of sale describes.

The contract will doubtless contain also a provision with respect to the apportionment of taxes, insurance, water charges, and the like. The meaning of such a provision is quite simple. Whether it is in the interest of the purchaser, or of the seller, will in each case be determined by the facts or the date of closing.

Assume, for example, that it is provided taxes shall be apportioned as of the date of closing, which is September 1, 1924; that the taxes become liens and are payable July 1st and January 1st in advance, and that the seller has paid on July 1st the taxes covering the period from then until January 1, 1925, and amounting to \$300. In such case the purchaser would, on the closing, be called upon to allow to the seller two thirds of the taxes so paid, representing the proportion of the taxes paid for the period from September 1st to January 1st, the benefit of which payment

accrues to the purchaser. If, on the other hand, the January 1st tax payment is to be in payment of taxes for the preceding six months period, then the purchaser, taking title September 1st, should be allowed by the seller one third of the \$300, representing the proportion of the taxes for the months of July and August, when the seller owned the property.

In the case of insurance, whether an apportionment is advantageous or disadvantageous will depend largely on whether the purchaser finds it more economical or advisable to cancel the existing insurance and take out new policies, or to take over and continue the existing policies. If the first course is followed, the seller should be able to cancel the old policies and receive a rebate of premium; hence, no apportionment will be necessary. If the latter course is followed, and the purchaser takes over the existing policies, it is fair and proper that he make an allowance to the seller for the advance premiums which the seller has paid. If the seller has, at the time of taking title, paid out \$200 for premiums on policies which have then run for one half their term, the purchaser should allow him \$100 for the balance of the term of the policies, the benefit of which accrues to the seller.

Similar adjustments may be made with respect to water, gas, sewer, and electric charges, telephone tolls, and the like.

The contract of sale should include a clause providing for the contingency of the destruction of the property by fire prior to the closing of title. It may provide that the risk of loss by fire prior to the closing shall be borne by the seller, or it may provide that it shall be borne by the purchaser. In the ordinary case, the first provision is the one adopted. From the point of view of the purchaser, it is of importance that this course be followed and that it be specifically provided in the contract of sale that the fire loss, until title is actually closed, is that of the seller and not that of the purchaser. If this course be followed, the purchaser will not assume any fire risk until he has acquired actual title to the property.

With respect to the commission of the broker, the ordinary rule is that his commission is paid by the seller. It is quite customary to include in the contract a statement that a specified broker brought about the sale and that the seller will pay his commission. In many cases the contracts of sale are prepared by the broker, and in such cases a provision to the foregoing effect will usually be included. If the agreement is that

the purchaser shall pay the commission—which in the ordinary case he should not agree to do—the contract should so specify.

It is important that the purchaser guard himself against the danger of being called upon to pay an unfair proportion of special assessments. It is usual to provide that any special assessments confirmed prior to the closing of title shall be paid by the seller. It will be advisable, if possible, for the purchaser to extend this condition so as to provide that the seller will pay, as well, any assessments the proceedings for which are instituted prior to the closing of title. This is a rather broad condition, but in many cases it will be accepted by the seller. It is well worth trying for, in any event.

In practically every case of title closing it is advisable to secure, when possible, a title policy from some reliable title insurance company. When this is contemplated it is an excellent plan to provide, if you can get the seller to consent to it, that the contract to purchase is subject to the approval of the title by the title company and that, if the company does not pass it, the purchaser need not accept title. On the question of title insurance I shall have more to say in a succeeding chapter.

In general, the importance of the contract of



sale and purchase is such that the prudent purchaser should consult his attorney before executing it. Once the contract is signed, his lawyer may be powerless to extricate him from difficulties resulting from it. The expense involved in having it properly passed upon in the first instance is negligible in comparison with the amount involved. There is no stage of the whole process of acquiring title when proper advice is of more importance, or when a stitch in time is more likely to save many times nine stitches later on.

## CHAPTER IV

### LAND DEVELOPMENTS, AUCTIONS, AND INSTALLMENT PURCHASES

**H**OMES are often acquired under plans which differ materially from the ordinary sale and purchase. A brief separate discussion of these alternative plans is in order.

The last decade has witnessed the inception and growth, to a remarkable extent, of the modern land development scheme. The outstanding characteristics of this method of selling property have been the purchase of a large tract of unimproved land by the promoters of the enterprise, the laying out of roads, more or less complete, and the resale of the property on a lot basis. There is practically no one of the larger cities in the vicinity of which a land development of this character has not been attempted or carried out.

It cannot be justly said that this plan is necessarily unfair to the purchaser. Oftentimes it is the means of working a great benefit and of



making available to those of moderate income country homes which otherwise they never would acquire. Some of the communities thus created have been such as to drive many a lover of the artistic and of sanity in architecture to profanity. Some, handled intelligently and under proper architectural guidance, have been a source of great good. The man who takes unimproved and often waste land and, risking his capital in the enterprise, transforms it, by imagination, energy, and business ability, into a community of homes for hundreds of families theretofore existing in city apartments, deserves thanks and encouragement. It is unfortunately true, however, that many of these developments are of the "shoe-string" variety, financed on inadequate capital, cheaply conceived, and cheaply carried out.

The purchase of a home under one of these general development schemes is often beset with other problems and dangers than those which characterize the purchase of a home in the ordinary way. In many cases the promoter of the development has purchased the land by giving what is known as a "blanket mortgage" in part payment of the purchase price. By this term is meant a mortgage which covers the whole tract. As portions of the property are divided into

lots and sold, the mortgagor makes a part payment on account of its principal and, in consideration thereof, the holder of the mortgage releases from the lien of the mortgage the particular lots which have been sold. This is quite in order, provided the lot which you purchase is actually and legally released from the mortgage obligation. It is imperative, however, that you take no chances in this respect and be assured that there is no encumbrance outstanding and affecting the lots which you purchase, of which you are not aware.

When the lot is purchased outright by one transaction and title passes at once, it is not a difficult matter to assure yourself that all is in satisfactory shape. By securing competent legal advice and title insurance you can ascertain exactly what you are purchasing and how sound a title you are receiving. Very often, however, the payment of the purchase price is not concluded at once but, on the contrary, the land, including the house if one has been erected, is purchased on the instalment plan. In such case the purchaser is called upon to make certain stipulated monthly payments, and the seller agrees that, when the full amount of the purchase price has been paid, a good title, free and clear, will be conveyed. When a proposition of

this kind is presented to the intending purchaser, he should look out for possible breakers ahead and proceed slowly and carefully. Many a purchaser has entered into such a contract and, after paying in the aggregate a substantial sum by instalment payments, discovered that he cannot secure the clear title to which his contract and payments entitle him.

The vice of any arrangement under which instalment payments are made, but the delivery of the deed held in abeyance until they are completed, is obvious. It lies in the fact that the purchaser, as he pays out his money, receives not a deed but merely an agreement that in the future, when his payments are completed, he will receive a deed. If the seller, innocently or fraudulently, is not in a position to give the deed when the payments are complete, the purchaser is decidedly out of luck. He will have, it is true, a good cause of action against the seller for damages but that, in the ordinary case, will be very cold comfort. In the great majority of cases the development will be carried on in the name of a corporation and not by an individual in his own name. It is a rather safe guess that, when the corporation has defaulted in its obligation to the purchaser, it will have no assets from

which he can reimburse himself for the damage occasioned him.

It is not many years ago that a large suburban development was undertaken near one of our large cities. Many roads were opened and many houses built. The plan was carried out by a corporation which maintained offices in the city, and in its advertising and general conduct gave every indication of being a responsible and prosperous concern. Many people—some of them well-known but of moderate means—purchased plots and houses under instalment contracts. After the scheme had been in operation for a considerable time, it developed that the corporation was insolvent; and a receiver was placed in charge of its affairs. When he took over the management and investigated the situation, he found that there was a blanket mortgage given by the corporation for a large amount and covering all of its property, including the portions of it which were being paid for in instalments. The corporation should have applied a certain proportion of the payments made, to release the lots under purchase from the lien of the mortgage. This it had failed to do. It had apparently not set aside for this purpose any part of the moneys which it had received,



but had used them to meet other charges and expenses of operation.

The result was that many who had practically completed their instalment payments and supposed that they would receive, within a few weeks, a free and clear title, awoke to the fact that it would be necessary for them, in order to secure title, to pay out additional and substantial sums to secure the release of their property from the mortgage lien. Some saw their investment wiped out completely as a result of their inability to raise the additional funds necessary to protect their property. If the purchasers of these lots had taken proper advice before signing their contracts and paying out their money, the weakness of their legal position and the dangers of the contract tendered to them would have been made clear to them. They would not then have taken the risk which they did.

In land developments, sales are made both of lots without improvements upon them and of lots on which houses have already been erected. Another plan which is often followed is to have the purchaser choose the plan for the house which he prefers and then have the operating company build it for him. The purchase price in this case includes, of course, the expense of erecting the house. It often includes also a sub-



stantial profit to the seller on the building of the house, as well as upon the turn-over of the land. The advantage to the purchaser is that he is able to acquire his home by small instalment payments, and is extended a very liberal credit in this respect by the seller. The disadvantage to him is that the ultimate cost is usually higher than it would have been if he had purchased the land outright and had himself financed the erection of the house.

Another method by which large tracts of land are often disposed of to home builders is by public auction. In many instances the auctions are held to wind up estates. Usually a comparatively small initial payment is required and the balance of the purchase price is allowed to remain on bond and mortgage. The amount of this balance represents, as a rule, a considerably higher percentage of the purchase price than does the amount of the ordinary purchase money mortgage. Also, in many cases, a title policy is either given free of charge to each purchaser, or a special reduced rate for the policy arranged for. Many excellent bargains can be had by the small home seeker at sales of this character. He must, on the other hand, be very careful to examine the terms of sale before he bids. These terms are ordinarily printed

and distributed before the sale commences. The understanding on which the sale is made is set forth in and determined by them. If they provide, for example, that title is to be taken subject to certain restrictions or encumbrances, the deed will provide accordingly. Thus the conditions of sale fill much the same function as the contract of sale. They should be carefully analysed and submitted to an attorney for his comment before the purchaser attends the auction.

Another disadvantage of the auction sale is the difficulty or impossibility, in the usual case, of knowing just how the locality is going to develop or who one's neighbours will be. Some idea as to this may be had by an investigation of the character of the immediate neighbourhood and of the restrictions, if any, which are to be put in the deed. These will be referred to in the terms of sale and indicate the type of houses to be erected and the character of the community which it is sought to create. Also, before the sale takes place, the auctioneer will receive many inquiries from those who contemplate attending it. He will ordinarily be glad to put you in touch with the persons who have thus manifested their interest. In this way you can secure some

idea of the character of those who may be purchasers and your future neighbours.

The purchaser must remember, also, that where land which has theretofore been taxed as acreage is divided into lots and sold, it is thereafter taxed on a lot basis. The result will be a very much higher tax than formerly. In figuring his future taxes, the purchaser must bear this fact in mind.

There are two things especially which are the curse of many of the real estate developments to-day—one is the atrocious architecture indulged in, and the other the flimsy character of much of the building which is done. Whether the building appeals to you as attractive in design you can tell at once. Whether the fresh stucco or paint covers skimped and improper construction work is not so easily determined. It will well repay any purchaser to employ an architect or practical builder for a few hours and let him examine and report upon the construction of the house which is under consideration.

To the eye of a layman a house may be well constructed when it is in fact a miserable job. The character of the timber used, the framing work and masonry, the plastering, the plumbing, and the heating plant are all items which may

look well and yet be improperly done or of poor quality. I have watched a mushroom development spring up, in recent months, where the houses were thrown together almost overnight. It is quite manifest to anyone acquainted with building conditions that they will not give any proper degree of satisfaction, or be worth the prices paid for them.

There are all grades, of course, of real estate developments—to suit all tastes and all pocket-books. Many are thoroughly high class and conducted by responsible and capable organizations. There will be different factors present in each case; in some a greater degree of caution will be necessary than in others. It is a safe rule, however, which bids the purchaser consider carefully the proposition which is presented to him and determine just what its advantages and disadvantages may be.

In practically every case due consideration must be given to the general facilities which are available—such as schools, transportation, light, water, and sewerage. These items have been already referred to. Too many people, seeing an attractive development of apparently high type, take it for granted that many of these essentials are present when this is not the case. In the matter of roads, especially, the seller is likely to



open up new surface cuts with improper foundation work, if any, and no proper curbing and drainage. A road which has been nicely crowned and rolled may look reasonably well on a summer day and become a quagmire by Christmastide. A sidewalk which one accepts at first as adequate may become quite impossible to use after a few weeks of rain or snow. Unless the roads and sidewalks and drains are properly constructed when the property is purchased, the purchaser might just as well add at once, to his estimate of the initial cost, his proportionate share of the special assessments which will be put through to provide the expense of proper construction.

The point is that all of these considerations should be taken into account, passed upon and allowed for, before the purchase is made and not after.

It will be evident that the greater part of what I have said in the foregoing pages has reference to the smaller and more humble homes. As a rule, it is the small-sized lot and the home of comparatively small cost which are involved in a building development scheme, or general offering at public auction.

Where the purchase of land and the building of a house, independent of any land development



project, are concerned, the purchaser himself will be called upon to handle the questions of the title, the contract for the construction of the house, the understanding between the client and himself, the financing of the purchase and of the building operation, and all the other questions and considerations which enter into the acquirement of the property and the building of the home. In this connection, it will be necessary for him to consider also the matter of title insurance, of a building loan or straight mortgage, as the case may be, of the choice of the architect and of the contractor, and whether he will build under a lump-sum contract or on a cost-plus-percentage basis. In my consideration of these matters I shall have in mind primarily the ordinary case of the purchase of land and the building of the home, rather than the special cases of general land developments, sales at auction, and the like.

The contract of sale has been discussed. It is now in order to deal with the examination of the title to the land, the points which are of importance in this connection, and the things which the home builder must do and must avoid doing in order to protect his rights and to be sure of securing a clean and legal title.

## CHAPTER V

### THE EXAMINATION OF THE TITLE

**T**HE contract of sale having once been agreed to and entered into, the next step is the examination of the title and the taking of whatever action may be necessary to satisfy the purchaser that the title is clear, and that the property is not subject to any encumbrances of which he has no knowledge.

The examination of the title is peculiarly a legal proposition. It is not a matter which the owner, unless he be an attorney, can possibly handle, with safety to himself or with any assurance that the title which he will receive will be clear and valid. It is possible, although highly inadvisable, for a purchaser to attend, himself, to the contract of sale. The importance of legal advice in passing on the chain of title is a much more vital proposition. The purchaser can follow one of two courses in having the title looked into. He can refer the whole question to his attorney, or he can employ a title company direct to examine the title and to act for him on

the closing. If he refers it to his attorney, his attorney can either examine the title himself or he can arrange with a title company to examine it and to report to him. In this event, the client will have the benefit both of the report of the title company and of the advice of his own counsel. In some country districts title companies are not available, and the title must be searched by the purchaser's own lawyer. As a rule, however, where the property is within reasonable distance of a town of at least moderate size, the aid of a title company can be secured. The records held by a title company, its special experience in title matters, and its organization, directed to passing on questions of title and investigating any points which require special consideration, equip it to give a service which, if possible, should be availed of.

The ideal arrangement is for the purchaser to refer the title to his own attorney and have the latter arrange for a title company to pass upon and to guarantee the title. In this way, as I have already noted, the client secures the benefit of the title company's advice and experience and, at the same time, has the benefit of the advice and attention of his own counsel. Each of these elements is important. His attorney will in all likelihood take much more interest in the

matter and give it much more personal attention than a title company organization which, in the nature of things, will be inclined to treat all title investigations in a regular routine manner. On the other hand, the title company, by reason of its facilities and experience, is in a position to give valuable advice.

In addition to this, an especially important consideration in favour of having a title company act with the personal counsel for the purchaser, is that, if this be done, a policy of title insurance can be secured from the title company for a comparatively small consideration, based upon the amount of the purchase price. This policy will guarantee the purchaser and all those claiming under him against any defects in the title, except such as may be specified in the policy, up to the amount of the face value of the policy. This is, usually, the amount of the purchase price. In case a defect in the title develops, the title company will make good the loss to the purchaser. In case the latter resells and a claim is later made against him by a subsequent purchaser, by reason of some flaw in the title, the title company will stand behind him and reimburse him for any amounts which he may be compelled to pay, up to the limits of the policy. The title company will, in all likeli-



hood, desire also to join in any proceedings brought against the holder of its policy and will ordinarily defend these proceedings, at its own expense and through its own counsel.

I have before me at the present moment a case which illustrates quite aptly the advantage of title insurance. Representing a client who purchased a suburban property, I employed a title company which joined in passing on the title and gave the usual policy of title insurance. The attorneys for the seller claimed that the employment of the title company was quite superfluous, as they were conversant with all questions involved in the title. As a matter of regular policy and to protect my client against any possible future developments, which could not be discounted at the time, I insisted, however, on securing the policy. The expense was comparatively negligible in comparison with the cost of the property. My client held the property for some time and then disposed of it to others. Following his resale of the land, a question arose with respect to title which had never been raised by any one, involving a claim of an adjoining owner to a certain portion of the land. Under these conditions, I notified the title company at once of the situation and, in the event that the claim is by any chance sustained against my



client, the title company will at once reimburse him and bear the burden of any proceedings against him. In addition to this, it is co-operating in adjusting the controversy and placing at our disposal its records, in substantiation of the correctness of my client's position.

A policy of title insurance is thus a protection, not only against possible defects in the title, but against legal proceedings involving the title and based upon unjust claims. No one can say, with assurance, that in the future some question regarding the title will not be raised, with or without reason and justice. It is very pleasant to feel that a reputable and responsible title company stands behind one, ready to assume the burden of any litigation and to reimburse one for any damages recovered by reason of title defects.

It is manifestly important that whatever title company is employed shall be a company of ample financial resources. There is a considerable difference, also, among title companies, in the broadness of their point of view. It may be given, as a general rule, that none of them will take any unnecessary chances with respect to the insurance of the title. Defects which they consider substantial will be excepted by them from the operation of the policy. For instance,

if they find that a right of way across the property exists, they will except from their policy this right of way; and any defects in the title, or claims made against the owner of the property, by reason of it, will not enable him to secure redress from the title company. This procedure, of course, is entirely natural. The protection given by the title company's service lies primarily in the assurance that the title has been thoroughly examined and all possible defects ascertained in advance. In the second place, it lies in the fact that if any defects develop later, the purchaser will be protected as against them.

Many title companies, however, are much more liberal in their construction of possible title defects than others. Some will go to what many consider absurd lengths in raising and making exceptions as to defects which are sometimes much more imaginary than real. Others are inclined to a much more practical point of view, and will only except in the policies such defects as they feel are really substantial. There is a considerable difference, also, in the interpretation which the companies will place upon the words, "substantial defects." Defects which one company will deem substantial another company may be ready to waive. The purchaser will do well to deal with a title com-

pany which, in examining titles, adopts a conservative policy. At the same time, granting that the responsibility of the company is clear, he will, by a little inquiry, be able to deal with a company which is reasonably liberal in its construction of title questions and of its obligations to its policy holders. His attorney will, from past experience, be best able to advise him in this connection, and to aid him in the selection of the company.

It is a very common custom for title companies to give to attorneys a commission on the amount of the premiums paid to them on policies, the orders for which have been placed with them through the attorneys. This custom is obviously based on the desire of the title companies to encourage attorneys to handle titles through them rather than to examine them independently. Most conscientious attorneys will be glad to pass on to their clients the benefit of the commission given them by the title company. In figuring the cost of the title insurance, the amount of this commission, which in many cases is 20 per cent. or 25 per cent. of the premium, can be allowed for accordingly. If the client places his order for the title policy direct and not through his attorney, the commission will not be given to the latter. It is there-

fore important that the title be referred to the purchaser's personal attorney in the first instance, so that the benefit of the allowance may be secured.

Some attorneys will prefer to examine their own titles and will, therefore, advise against the employment of a title company. In some cases this will be dictated by selfish reasons; in others by the perfectly genuine belief that they can examine the title as well or better than the title company. It is my personal belief that no attorney can, without disproportionate expense to the client, examine the ordinary title as thoroughly or satisfactorily as the title company can examine it. Any competent attorney can examine the title as well as a title company, in the sense of thoroughness and reliability, but his examination will, as a rule, take vastly more time than an examination by a title company. The latter's organization is directed to examination work, and its facilities for that work are especially good. If an attorney undertakes, individually, to examine the title, his charge, based on the time which he will be forced to give, will ordinarily amount to as much as the charge of the title company plus the attorney's charge for services where he works in collaboration with the title company. The client may



just as well, therefore, have the advantage of his own attorney's advice and of the advice of the title company, in addition.

The services of the title company embrace having a representative present on the closing of title. The practical steps involved in the examination and closing of the title are substantially as follows: the purchaser will refer the examination of the title to his attorney, with an authorization to the latter to employ such title company as he deems best. The attorney will employ the title company and submit to it the contract of sale. The title company will examine the title and submit its report to the attorney. This report will include all exceptions and encumbrances which the search discloses. The attorney will examine the report and, if there is anything in it which he disputes, will take up the question with the title company and dispose of it. He will then take up with the attorney for the seller any defects in or encumbrances upon the title which are reported by the title company, matters of unpaid taxes and the like, and see that arrangements are made by the seller to dispose of these objections prior to the closing of the title. When title is closed, the seller will produce whatever additional papers or proof may be necessary to meet the ob-



jections of the title company as given in its preliminary search. The representative of the title company will then cancel these objections on the copy of its report held by the attorney for the purchaser; only such objections as are not so disposed of will be made the subject of exceptions in the title policy. For example, if the title company reports that there are outstanding taxes amounting to \$1,500, and its preliminary report contains this item as an exception, on the closing, if the seller produces the receipted tax bills covering these taxes, the representative of the title company will make a notation on the copy of the report removing this exception, and the title policy will make no reference to it.

On the closing of title, the title company, if desired, will take the deed and record it and have it returned to the purchaser or to his attorney. The policy of title insurance will not be delivered on the closing but, following the recording of the deed, will be made out and forwarded in due course. As a rule, the bill of the title company will be presented at the time of the closing. As a practical matter, however, it may be paid within any reasonable time thereafter, where the responsibility of the purchaser

or of his attorney is known to the title company. Where a title policy is to be given, the title company will wish to attend itself to the recording of the deed, so that it may have first-hand knowledge of the fact that it has been recorded.

A survey may or may not be required. As a rule, in a title involving city property or property in a town, a survey is advisable and in many cases a necessity. In the case of country land it is not ordinarily a matter of so much importance. The survey cost is not often high, however, and it is more satisfactory in every case to have a survey where it is practical to secure one, and the expense of doing so is not disproportionate to the amount involved. The title company will make a survey, if requested so to do, and will make a slight additional charge for this service. If it does not make a survey, its title policy will usually contain the provision that the title is insured "subject to any state of facts which an accurate survey may show." If it does make the survey, this limitation on its guarantee will not be included and, if the survey prove inaccurate, it will reimburse the owner for any damage occasioned to him by the discrepancy in the title. As already pointed out, a survey will enable the property to be described by metes and

bounds, rather than by a more general description, and will hence add to the accuracy of the description in the deed.

Where property has been held for a long time by one owner, especially in the more rural districts, the purchaser will probably find that the description contained in the old deeds is quite inadequate. The legendary description in the country title, where the boundary ran "to the nail in the cedar post, which formerly stood on the boundary of the land of John Smith," is famous. It is not much more vague than many descriptions which are met with in old deeds, which refer to vanished landmarks or to the names of adjoining owners who have long since passed away. Where the deed held by the seller is vague in its description, a new description in the deed given to the purchaser is a matter of importance. If the description can be safely and adequately made up without a survey, the survey expense may be dispensed with. Where this cannot be done, however, a survey should be ordered and the description should follow the survey, thus making the boundaries clear and definite.

## CHAPTER VI

### THE CLOSING OF TITLE

**T**HERE are various forms of deeds recognized by the law. Some of these merely convey whatever right the seller may have in the property. Other deeds contain a warranty by the seller that he is the true holder of the title and has good right to convey the property and will protect the purchaser against any defects in the title. This is the form of deed commonly known as the full covenant and warranty deed. It is the form which, wherever possible, the purchaser should insist upon receiving.

A full covenant and warranty deed gives to the purchaser the clear right to proceed against the seller in the event of defects in the title, and the right to hold the seller responsible for any damages occasioned the purchaser by reason of these defects. Where the seller is a dummy or a corporation of no financial responsibility, this protection will be of small advantage. Where, however, the seller is an individual, or a cor-



poration with resources and a reputation for responsible business dealings, the additional protection given by the full covenant and warranty deed is a substantial one.

In some cases the seller will not warrant the title. Executors and trustees, in giving deeds, cannot or will not, ordinarily, warrant the title of the land conveyed. In addition to this, they are required by law in many jurisdictions to recite in the deed the full consideration given for the property. In most cases, the deed will recite merely a nominal consideration, as "One hundred dollars and other good and valuable considerations." One of the purposes of reciting a nominal consideration has been the desire of the purchaser not to make the price paid for the property a matter of record, either because he prefers not to make public his private affairs or because, in the case of a future resale by him of the land, he is in a better position to resell if the amount which he paid in the first instance is not public property. Under the present Federal requirements, however, for tax stamps on deeds, the amount of the consideration can be figured without great difficulty, and thus the advantage of the recital of a nominal consideration has been largely done away with.

Forms of deeds vary in different jurisdic-



tions, and the advice of competent legal counsel is necessary on this as on the other details of the title closing. All deeds must, before they can be recorded, be acknowledged by the grantor before a notary public or other official authorized to take acknowledgments. Nearly every state has a different form of acknowledgment. Unless the proper form is used, the recording officer will refuse to place the deed on record. When the deed is drawn, care should be exercised to see that the form of acknowledgment used is the form which is in force in the state where the deed is to be recorded. This will be the state where the property is situated. If Jones, living in New York, is giving to Smith a deed to New Jersey property, the acknowledgment should follow the New Jersey form. To be entirely safe it is well, in such a case, so to phrase the acknowledgment that it complies with both the New York and the New Jersey requirements. Here again proper legal advice is highly desirable.

As soon as the deed has been executed and delivered it should be recorded. It is not safe to hold a deed without recording it. If this be done and the seller gives a deed conveying the same property to another innocent purchaser, who has no knowledge of the prior deed, and the

second deed is recorded before that originally given, the holder of the second deed may secure good title as against the holder of the first deed. The latter would, of course, have an action for fraud and damages against the seller, but this might be cold comfort and a poor substitute for title to the land which he had planned to acquire and occupy. A deed must be recorded in the county in which the land lies. To record it, it is only necessary to deliver it, or forward it by mail or otherwise, with the necessary recording charges, to the county clerk or other recording officer, whose office will be at the county seat. The recording charges are small, and depend upon the length of the deed. They will usually be less than \$5. There may be special circumstances which lead the purchaser to withhold the deed from record. In the absence of any such, however, the recording should not be neglected or delayed.

Where the deed given is not a warranty deed, the warranty clause will be omitted, and usually a bargain and sale or a quit-claim form of deed will be used. Quit-claim and bargain and sale deeds carry with them no express warranties. The purchaser of land for a home should, unless the circumstances are exceptional, insist on the full-covenant form of deed. If the

seller displays an anxiety to deliver a quit-claim or bargain and sale deed the purchaser will do well to be on his guard. The tender of a bargain and sale or a quit-claim deed is often, in itself, a rather clear indication that the person tendering it has doubts regarding the title which he has a right to convey.

Another form of deed which is becoming more and more usual under modern conditions is the deed from a corporation. Title to land is frequently held to-day in the name of a corporation. In some cases the corporation is a real estate development company. In other cases it represents the holdings of some individual who, for the better handling of the property or questions of taxation or other reasons, has incorporated his holdings. In any case, where a deed from a corporation is received, the purchaser, to be entirely on the safe side, should receive with it a certified copy of the resolution of the board of directors, authorizing the giving of the deed. The corporation acts through its board of directors. Without authority from the board of directors the officers cannot deed the property of the corporation to others. If a deed is given to you by one of the officers in the name of the corporation, and it develops that no action was taken by the board of directors authoriz-

ing the delivery of the deed, you are exposed to the danger that, at a future time, those in charge of the corporation may try to take advantage of this defect. If the management of the corporation should change and for any reason it should become in the interests of the corporation to void the title given, the new officers might well claim that the title was defective, in that the board of directors had never authorized the transfer of the property. A resolution authorizing the transfer is quite simple, and there should be no great difficulty in securing a copy of such a resolution certified by the secretary as correct.

Where a deed is acknowledged in a county or state other than that in which it is to be recorded, there should be secured what is known as a county clerk's or court clerk's certificate. This is simply the certificate of the county clerk or the clerk of the court having jurisdiction in this connection, to the effect that the notary before whom the acknowledgment of the deed was taken was duly qualified and entitled to act. The county clerk's certificate will be issued at the county seat of the county in which the acknowledgment was taken. The charge for it is usually about twenty-five cents, and it is issued as a matter of course upon application.

Another precaution which it is wise to take is



to state in the deed that the vendor is of full age and, if the vendor is married and the wife joins in the deed, to have a similar statement with respect to her. Where a deed is granted by an unmarried man or woman, the deed should state, after the name of the grantor, that he or she is unmarried. Otherwise, on a search of the title, the question of whether the grantor was married or not will arise. Where such a statement is contained in the deed, the record will at once disclose the correct facts, and no elaborate investigation will be required, years afterward, to ascertain whether there might not have been living a wife or husband, as the case may be, who should have joined in the conveyance.

Where title is conveyed by an executor, the terms of the will pursuant to which he acts and the facts showing his proper appointment and qualification as an executor should be carefully checked and verified.

If it is the intention of the purchaser to place the title to the property in the name of his wife or of any one other than himself, the most convenient plan is for him to decide upon the name of the person in whom title is to be placed, before the closing is held. If he desires, for example, to have the property held by his wife, he can, by a direction to this effect at the closing,



have title passed direct to her by the seller. This will obviate the necessity of the owner re-deeding the property to his wife, as he would have to do if he took title in his own name in the first instance. It may be to his advantage to have title placed in the name of himself and of his wife. Under the laws of some states, where property is jointly held by husband and wife, title to the property automatically passes to the survivor on the death of the other. On this point, the owner should secure a word of legal advice before acting, as the states differ materially in their statutory provisions concerning the rights of husband and wife in real property, and in the constructions which the courts have placed upon these rights.

Inasmuch as inheritance taxes are claims against the property left by a decedent, proper evidence should be secured also that all inheritance taxes on the estate of any decedent whose property it is proposed to transfer have been duly determined and paid. In the case of state inheritance taxes, the taxes are usually assessed and paid with far greater promptness than in the case of the Federal estate tax. In the state proceedings also, as a rule, there is an order entered fixing the amount of the tax and, unless an appeal is taken from this order by the state tax

authorities within the statutory time, the tax assessed cannot later be questioned. Under the Federal practice there is considerably greater delay in fixing the tax in the first instance and, in addition to this, the right of the Government to reopen the tax return and assess an additional tax at a future date is not subject to the same limitations as those characterizing the state inheritance tax proceedings.

When title is closed it is advisable to secure a bill of sale covering any household articles of personal property to be conveyed. These may be mentioned in the deed but, as a rule, the deed refers merely to the real property, and items of personal property are more properly taken care of by a bill of sale. Where the purchaser is to receive property, such as carpets, curtains, shades, awnings, mirrors, removable gas ranges, special lighting fixtures, and the like, it is important that the original contract of sale should so specify. The general rule is that personal property is not part of the real estate, and that no property which is not a fixture within the legal definition of that term—that is, affixed to the real estate so as to become part of the structure of the building—is conveyed by deed. If the contract of sale provides that personal property which it specifies shall be included in

the sale, the purchaser will be in a position to request the delivery of a proper bill of sale to him on the closing, or to have a proper clause inserted in the deed itself covering the additional property transferred.

When title is closed the purchaser should secure from the seller, if possible, any old deeds or abstracts of title or policies of title insurance which the seller may have. In many cases the seller will not be willing to part with the old deeds upon which his chain of title depends, preferring to hold them as evidence of title in the event of any question arising between him and the purchaser in the future. On the other hand, the seller is often quite willing to deliver these instruments. Where this is the case the purchaser should secure them and file them with his title papers.

Another point which should be considered and looked into is the matter of licenses which the seller, during his occupancy of the property, may have granted to public service companies. Where a telephone pole or electric light pole is erected on a person's property, the holder of the property should, without fail, secure from the company erecting the pole an agreement known as a revocable license. The effect of an agreement of this kind is that the holder of the prop-

erty grants to the company a license to erect the pole but that it is understood and specifically agreed that this license can be revoked by the property holder at his option at any time. Where such an agreement is secured, the company cannot claim, after some years have elapsed, that it has procured a prescriptive right to maintain the pole indefinitely, by reason of the fact that the owner of the property has allowed it to be erected and maintained without protest. The same rule applies to other matters, such as a water or sewer line across one's property.

On the closing, the purchaser should ascertain the facts regarding any poles, lines of pipe, or other possible easements affecting the property or which may affect it in the future. If the seller has any papers covering these the purchaser should secure them so that he will be in a position to protect himself in the future against any claims by the public service companies that they have obtained a permanent right to maintain their poles or other equipment on the property. Where a revocable license has not been secured by the seller, the purchaser will do well to take up with the companies involved and secure from them himself, on taking title, revocable licenses covering whatever poles or lines of

wire or pipe are erected or laid upon or across his property. He will have little difficulty, in the ordinary case, in inducing the company to sign a revocable license. By securing such an agreement he will protect his property in the future from claims which might possibly otherwise be advanced, after a lapse of many years.



## CHAPTER VII

### THE SELECTION OF THE ARCHITECT

**A**LL of the matters discussed up to this point have had to do with the selection of the property and the taking of title. When title has once been secured, and the home builder is at last the owner of the property which he has selected, he is prepared to enter upon a different and far more interesting operation. He is now ready to proceed with the building operations, and the first step in this connection will be the selection of a competent architect. There are important questions to be considered and determined in this connection.

I am assuming that, in the vast majority of cases, the home builder will desire to engage the services of an architect. In some instances, of course, homes have been built without these services, but the instances where a really satisfactory and artistic result has been secured under this plan are rare. Anyone who undertakes to erect a house by dealing directly, himself, with the contractor and without securing

plans from an architect, is running a risk which is out of all proportion to the sum which he saves by following this course. There are many books of plans available which can be used, where the owner does not desire to employ an architect. They are plans which are applicable, as a rule, to small and inexpensive types of houses. Some of them have been prepared by capable architects. Even assuming, however, that the plans selected from some such compilation are drawn by a capable architect, the owner who has his house built in accordance with them, and omits to employ an architect, will not have the benefit of the supervision of the work by the architect, which is one of the important items of service which the latter renders. Supervision by an architect is in many ways exactly as important as the preparation of the plans by an architect. The architect is trained to supervise the construction work as it progresses, and a far better result can ordinarily be secured where this supervision is present than where it is dispensed with.

The employment of a thoroughly competent and well trained architect is not a mere luxury, as some view it. It is, on the contrary, an excellent investment. No layman is equipped to act as his own architect any more than he is

equipped to act as his own lawyer. No layman, or contractor, for that matter, can design a house as satisfactorily as a competent architect can design it. A good practical builder can easily prepare plans and build a house for you, which will be comfortable, well constructed, and practical. It will not, however, be in any way comparable to the result which would be secured under the guidance of an architect. In one case the house will be serviceable, but ordinary. It will be a house—no more and no less. In the other case it will be at once serviceable and distinctive. It will have character and individuality. It will be characterized by the indefinable something which gives it charm and sets it apart from other buildings. In a word, it will be artistic as well as utilitarian.

Such a house will be a good investment, because it will have a much higher sale and rental value than houses lacking any special individuality. The fee paid the architect will be made up many times over by the value added to the house by his services. If it becomes necessary for the owner to sell or to rent, he will have a property upon which he can realize.

When it comes to matters of practical planning and equipment, the layman or ordinary contractor is not at so much of a disadvantage.

Here again, however, the architect, if he be really competent, will be able to make a better use of the space available and to lay out the plan so as to afford a maximum of comfort and of practical convenience.

Now, as to the choice of the particular architect to whom the work is to be entrusted. Every architect will differ in method and abilities from every other architect. The problem which confronts the home builder is to select the one who is best fitted to handle the particular job in question. Some architects are noted for their work in connection with public buildings, churches, hotels, and the like. Some are specialists in commercial buildings, such as office buildings, factories, and the like. Others are known especially for their work in designing country houses. It is to this latter class that one must look for advice.

Here again, however, the architects can be reclassified in various groups. There are those who are noted for the planning of large estates; there are those who, on the contrary, have made their reputations in work of a more humble character—in connection with the design of houses of moderate expense, neither cheap nor very costly. This latter group will be the one to which the



home builder will more generally have occasion to turn in selecting his architectural adviser.

At this point, the field can be again narrowed, if the client has a general idea of the type of house which he desires to build. If it is to be a Georgian house, he will find that a number of architects are noted for their Georgian work. If it is to be a half-timber house, he will find many who are more inclined to that type. If it is to be Italian or Spanish in motive, he will find those whose work has been largely in the Italian or Spanish style. If the house is to come under that much overworked and inaccurately used term "Colonial," he will have available many whose work in this field has become well and favourably known.

Sometimes the home seeker will be without any definite ideas as to the type of house which he desires. In such a case his main concern should be to place himself in the hands of an architect whose work is sufficiently versatile so that he will be inclined to suggest different schemes to the client and adopt the one which proves the most acceptable. He is a fortunate architect who possesses a client who has not decided, before seeking his advice, upon the exact type of house which he desires. In such event



the architect has a real opportunity to create something. He is not, as is usually the case, under the necessity of adapting his ideas to the preconceived ideas and prejudices of the client.

It is not at all essential that the architect chosen should be a man of special reputation. If the home is to be an inexpensive one, the larger architectural firms would not be especially interested in planning it. A less well known architect will be able to give, perhaps, more personal attention to the work. There are many younger architects whose practices have not yet been firmly established, who will give excellent service and be fully competent to undertake the work.

There is one point, however, upon which I wish to lay especial emphasis. Whoever the architect may be that is selected—whether he be of great reputation or little—be sure, in any case, that he has an appreciation of the business elements entering into the practice of his profession. The practice of architecture to-day has a very real and important business side. An architect who is an artist only, without a sense of business principles and practicalities, may give a pleasing design, but is likely to give wholly inadequate attention to the practical side of the building operation. The home must be conven-

ient and adapted to the needs of its owner, as well as beautiful. The modern housewife will not be satisfied with a highly successful exterior, unless the interior arrangements are satisfactory. She will have small comfort in fine roof lines, if they are at the expense of closet and storage space. The ideal combination is an architect who combines real artistic feeling and ability with a sense of the realities and business considerations involved in the building operation.

Entirely aside from the necessity of employing one who will be practical in the planning of the house, and more important even, the prospective builder should employ as an architect one who will be capable and businesslike in handling the business details of construction. The building of a house under modern conditions is a very different proposition from what it was some generations ago. To-day considerations such as labor unions, building laws and restrictions, and all the other complexities of the modern building situation, make it imperative that the successful architect must provide, himself or through his organization, business ability as well as artistic ability. He must be prepared to advise his client in connection with the building contract. He must be prepared to keep an accurate check on the materials furnished, the

work done, and the prices charged by the contractor. Under the building contract the duty devolves upon him to issue certificates as the work progresses. Upon these the owner thereupon makes payment to the contractor for the work done. It is important that the architect shall not issue these certificates in any perfunctory manner, but that they shall be issued by him following, and as a result of, a careful check of the work covered by them. In many of the most successful architectural firms one of the partners or chief assistants is primarily a business man charged with an oversight of the business details entering into the work of the office.

It will not be a difficult matter for the home builder to ascertain by inquiry the reputation for business sense and ability held by the architect whom he intends to employ. If he finds that he is noted for artistic ability only, and is not considered reliable in his business judgment, he will do well to seek elsewhere for his professional advice. Of course, it is desirable not to swing over to the opposite extreme. There are many so-called architects to-day who should not be classed as such in the true sense of the term. They have practical building ability and business sense, and yet are wholly lacking in artistic ability, which is just as necessary to the qualifi-

cations of a true architect as the other more practical qualities. A square box of a house may be very utilitarian and practical in its interior arrangements, but it will have no individuality or charm, either in its exterior or in its interior. By a judicious choice of one's architect one can secure both an attractive elevation and an interior arrangement which, while distinctive and in good taste, is at the same time thoroughly comfortable and practical. The capital value represented by such a home will be infinitely greater than that represented by a home of equal cost, but inferior and commonplace in design.

I have recently been in touch with a building operation involving a large amount of money, which illustrated extremely well the value of the business element in the architect's organization. The case to which I have reference was unusual in that the business organization of the architect was vastly superior to the business equipment which characterizes the office of the ordinary capable architect. Many difficulties arose in the building operation, owing to lack of financial stability on the part of the client and difficulties between the client and the contractors. It was extremely difficult, in investigating the situation, to learn from the representatives



of the owner the true financial status of affairs and the actual conditions of the work. The architect, it developed, was really the only one who knew exactly what the situation was, how much had been spent, what the client's commitments were, and what additional financial support would be necessary to carry the work to a successful conclusion. The matter was worked out on a basis of successful refinancing, but I can safely say that if it had not been for the architect and his organization, and the business-like manner in which the architect's office handled the matter from its inception, the whole building operation would have been a failure.

Of course, the building of a home involves a very modest outlay in comparison with that in the case to which I refer. In the last analysis, however, it is of just as much importance to the one building a home that his architectural adviser should be a sound business man, as it is to the client who is engaged in the erection of some large commercial structure. The loss in one case, owing to improper architectural direction or supervision, will be very much less than in the other. On the other hand, the ordinary home builder can less afford to suffer a loss owing to the errors of his architect than the man who is



directing, in association with others, the erection of an apartment or office building.

The architects of to-day are coming to appreciate, more and more, the value of a businesslike point of view in the conduct of their offices and of the work entrusted to them. It is not at all difficult to find in the profession those who are equipped to give satisfactory and conscientious service, with full recognition of the artistic necessities of the work and, at the same time, adequate attention to the business elements which it involves.

## CHAPTER VIII

### THE CONTRACT WITH THE ARCHITECT

**A**S a result of this growing appreciation by architects of the importance of handling matters on a businesslike basis, the profession is adopting more and more generally the practice of entering into a written contract with the client, before the work is proceeded with. It is a matter of a few years only since a suggestion to an architect that he should present a contract to the client for the latter's signature when the work commenced was met with the statement that he could not possibly do so, and that if he were to do so he would be in danger of losing the job which the client proposed to entrust to him. I have long contended, and the developments of the last few years have fully justified the contention, that the ordinary client is favourably, rather than unfavourably, impressed by a desire on the part of the architect to place the dealings between them on a definite and clear business basis.

Few laymen have any conception of the con-

siderations entering into the services of the architect and the matter of his compensation. They know in a general way that his compensation is based upon a percentage of the value of the work, but they are wholly ignorant of the circumstances under which payment is to be made and of the conditions which may give rise to a perfectly just claim by the architect for additional compensation. The general custom of the architectural profession with respect to charges is set forth in the schedule of charges of the American Institute of Architects. In the absence of any contract between the architect and the client the customary charges of the profession, as evidenced by this schedule of charges, would probably be held to control.

It is of real importance, therefore, that the client should realize the conditions upon which the employment of the architect is based, the obligations of the architect to the client and of the client to the architect, and the position which the architect, both as a legal and as a practical matter, holds in the building operation. In this connection we must consider also the form of contract to be entered into between the client and the architect and the points to which the client should direct his special attention. If the architect is employed without any real un-

derstanding as to the terms of his employment the result is likely to be unsatisfactory, both from his point of view and from the point of view of the client. It is important that their mutual rights and liabilities should be made clear in the first instance. With a capable and conscientious architect chosen, and his employment covered by a simple but clearly worded contract, the home builder may feel that his interests are in good hands and that he may proceed with the construction of his house with the knowledge that he will be properly advised, and that he will receive one hundred per cent. value for every dollar which he expends.

The services of an architect may be roughly divided into three classes. First, he is called upon to prepare what are known as preliminary studies. These are rough sketches showing the general elevation and plan of the proposed house, in sufficient detail so that the owner may judge whether the design and layout meet with his requirements and approval. In some cases these studies will be comparatively simple. In others they will represent a considerable amount of effort on the part of the architect. In order to produce them it will be necessary for the architect to confer with the client, learn what the latter's desires are, and decide how best he may

carry them into effect. With the wishes of the client in mind, the architect will set himself to the task of solving the problem in the best manner possible. In producing the sketches which he submits to the client, he will necessarily give a considerable amount of time to the study and consideration of alternative schemes.

When the studies are submitted to the client, and approved by him, the architect will enter upon the second phase of his work. This embraces the preparation of working drawings and full size or scale detail drawings. The working drawings are what are ordinarily termed the plans, covering the layout of the rooms, the construction of the house, and the like. The details are what the name connotes, namely, details of special work, such as doorways, window trim, mantels, and similar items. When the working drawings are completed the architect will aid the client in securing bids, and advise him with respect to the awarding of the contract and with respect also to the preparation of the contract with the contractor.

When the contract is awarded, the architect will enter upon the third phase of his duties, namely, that of supervision. In his capacity as supervising architect he will supervise the erection of the house and oversee the work done.



The purpose of this supervision is obvious. It is to insure, so far as it can, that the work be done in accordance with the plans and specifications. The specifications are prepared by the architect at the time the working drawings are prepared, and form a part of the contract between the owner and the contractor. The contractor, in making his bid, bases it upon both the plans and the specifications. The plans indicate the general layout of the rooms and other portions of the building, while the specifications detail the materials, the method of construction, and the finish of the various component parts of the job.

It is evident, from the foregoing brief outline of the architect's services, that many considerations will enter into the relationship existing between his client and himself. It is important that the intending home builder understand clearly the fundamentals on which this relationship with his architect rests, and the respective rights and liabilities which belong to and are imposed upon him and upon the architect. There are involved questions of contract and questions of agency, especially, which are important both from the point of view of the client and from the point of view of the architect.

Until recent years, as we have seen, it very

seldom happened that any written contract between the architect and the client was entered into. This was due largely to the fact that the architects had the impression that it would not be practical to approach their clients and ask them to sign a contract. Modern building conditions have become more and more complex, however. The uncertainties of the labor and material markets, the development and demands of the trade unions, all have introduced into the practice of architecture and the building of the house elements which, a few years ago, were largely absent. Under these changed conditions architects have gradually come to understand that it is not only practical, but desirable from every point of view, to have a definite contract entered into between the owner and his architect. They have come to appreciate the fact that the ordinary home builder is a business man and that it is no shock to him to be asked to make a contract with his architect. They have found on the contrary that in many cases, as a business man, he will view such a contract favourably and will be impressed with the businesslike procedure of the architect who presents it to him for signature.

Having had occasion, repeatedly, to note the many wholly unnecessary differences which

have arisen between architects and clients as a result of a lack of definiteness in their relations, I am whole-heartedly in favour of the signing of a definite contract between them. It is in the interests of the owner and it is in the interests of the architect that this be done. The contract makes clear and definite the terms upon which the architect's employment rests, the amount of his compensation, the powers which he may exercise, the limits of his authority, and the duties which he assumes.

If no contract is entered into, the owner has nothing other than perhaps oral conversations upon which to base his understanding of the terms of the architect's employment. In too many cases these are not even outlined orally. Time and time again the architect is employed without any reference by either party to the terms of his employment. It is perhaps natural that this should be so, because his employment is viewed as the employment of other professional men, such as physicians and lawyers. In many ways the rights and obligations of the architect are the same, in substance, as those of the lawyer. On the other hand, there is a basic difference between the terms of their employment. This difference has to do with the matter of the compensation to be paid to them respectively.

The compensation of the architect is, with the exception of those few and special cases where a lump sum to cover all services is agreed upon, based on a commission computed on the cost of the building. This commission varies in amount, some architects charging less and some more. Almost invariably, however, a percentage of the building cost represents the compensation to which the architect is entitled. The usual minimum charge is 6 per cent. Many of the better known architects of residential work charge 10 per cent. or even 15 per cent. As a rule, the charge will not exceed 10 per cent., and will certainly be not less than 6 per cent.

The leading architectural organization and society in the United States is the American Institute of Architects. This Institute publishes as I have already noted a schedule of minimum charges. These minimum charges represent the minimum fees which should be charged, in the opinion of the Institute, by architects. Under this schedule a minimum charge for any of the architect's services is 6 per cent. The schedule provides, as we shall see, for additional compensation in special cases.

Unless the compensation of the architect is definitely fixed by contract he will be entitled to



recover on the theory of what is known in the law as *quantum meruit*. This means simply that he will be entitled to receive the reasonable value of the work performed by him. What this reasonable value may be is a question of fact to be determined in each case. It has been held by the New York courts that the schedule of minimum charges of the American Institute may be properly offered in evidence, as showing the reasonable and customary charges of an architect. It is obvious that it will be much more satisfactory to the client and to the architect if the latter's compensation is not left indefinite in this way. It is important to the client that he know exactly what this compensation is to be. It is important to the architect that he know what he is to be paid for the services which he performs.

The American Institute of Architects has also prepared what is known as the Standard Form of contract between architect and client. Many architects use this form. Others have had prepared for them special forms adapted to their own practice. In any case, the owner will do well, if the architect does not raise the point, to request that a definite contract, outlining their relationship and mutual rights, be prepared and entered into. He will find that the architect



will be willing and glad to co-operate with him to this end.

Ordinarily the contract will provide a basic rate of charge by the architect, and will then provide for additional compensation to be paid under certain conditions. If the architect is called upon to prepare additional and changed sets of studies and plans, he will be entitled to an additional commission. If he is called upon to perform special services made necessary by delays or changes by the owner, or if the work on the job is let under separate contracts, he will be entitled to increased compensation.

This latter provision is sound and reasonable. Where work is let under one general contract the architect has to consider only that contract and his duty to hold the general contractor to a proper observance of its terms. Where separate contracts for different parts of the work are let a very different proposition is presented. One man will have the masonry contract, another the contract for the carpentry work, another the contract for the plastering and the painting. It will be necessary, under such conditions, for the supervising architect to keep in mind all of these contracts and to check up the work of the different contractors who are acting under them. His duties will be multiplied in consequence.

Of course, where one general contract is entered into, the general contractor will usually sublet the various portions of the work. This will not, however, increase the labour of the architect as the letting of separate contracts will increase it. The subcontracts between the general contractor and his subcontractors are the concern of the general contractor, rather than the concern of the owner or of the architect. The owner has the right to look to the general contractor for the proper performance of the work which the latter has agreed to do. He leaves it to the general contractor to handle the subcontractors, and assumes no responsibility with respect to them.

In building operations of the more costly kind, involving homes of an expensive character and with grounds of some extent, it is often customary to employ, in association with the general architect, special architectural advisers. In some instances, a so-called consulting architect is employed to co-operate with the architect in the planning and supervision of the work. In other instances, specialists such as landscape architects are called in to co-operate in the planning of the grounds, the laying out of the gardens, and the like.

As a general rule, I am rather opposed to the employment of the ordinary consulting architect

as distinguished from the landscape architect. It is not well to have too many advisers in the same matter. So far as the general planning of the house is concerned, any competent architect can attend to this without consultation with other architects. If a consulting architect is called in, there will usually be friction between the two architectural advisers, an overlapping of their work, a division of responsibility and a feeling of divided interest, which will necessarily be unpleasantly reflected in the work done and the results accomplished. No architect of standing likes to have another architect brought in to more or less oversee his work and to act as consultant with him in matters which he himself is quite capable of handling.

With respect to the employment of landscape architects the situation is somewhat different. They are specialists, devoting their time and attention to this one feature of architectural work. Their employment does not interfere in any way with the work of the architect on the house and other buildings. Their duties relate to the grounds only. There may nevertheless be, and will be in all probability, a certain line where their employment will overlap the employment of the regular architect. The latter is employed, in many instances, to attend to the

landscape details. In any event, he will probably be called upon to plan walls, driveways and the like. It is important, therefore, where a landscape architect is employed as well, that the functions and authority of the two architectural advisers be clearly defined and distinguished. The clearer the line of demarkation between their functions and duties, the less danger there will be of friction, of misunderstanding, or of duplication of effort.

In many instances, the architect and the landscape architect will enter into an agreement themselves, outlining the scope of their respective employments. They are especially fitted to do this, and if they can agree upon the work which each of them is to do toward creating the completed whole, the owner will do well to be guided by their decision and to accept the division of authority and work which, as between themselves, they recommend.

Somewhat akin to the employment of a consulting or landscape architect is the employment of the specialist in interior decoration. The architect is quite competent, ordinarily, to advise in this matter. Nevertheless, the number of specialists in interior decoration who have made a special study of the subject, and deal with it exclusively, has increased tremendously



in recent years. It is becoming more and more customary to employ interior decorators who work independently of, or in conjunction with, the architect. Where they are employed the division of responsibility, as between them and the architect, should be clearly defined and the rights of the architect to fees on the furnishings of the home understood and agreed upon.

If the architect is consulted with respect to the furnishings of the house and attends to the purchase of them, as he often does, he will expect in the usual case to charge his commission on the cost of these as well as on the cost of the house itself. If they are purchased through a separate interior decorator, the architect may or may not be consulted, and may or may not expect to charge a commission on their cost. These questions should be discussed and agreed upon for the protection of all concerned.

When the architect attends to the purchasing of furnishings, he is given ordinarily a commission by the firm from which they are purchased. This commission he will gladly, in many cases, share with the client. If he charges a fee on the cost of the furnishings which he purchases, he should certainly allow the client, in any event, the benefit of the commission given him by the seller. It would not be fair to the



client for the architect to charge a commission on the full retail value of furnishings which he purchases and, at the same time, to accept a commission from the seller on the same goods and materials.

I recommend that the architect be allowed, where possible, to attend to the furnishing and decorating of the home, as well as the more purely architectural features of design and construction. His advice and the discounts which he will be able to secure will be well worth while. The final result will be usually much more in harmony with the general plan and type of home than if the owner undertakes the decorating and furnishing, without architectural aid or advice.

In order to make quite clear to the owner the usual basis of the architect's compensation, I can do no better than to take up seriatim the provisions, in substance, of the American Institute Standard Form and point out the practical effect and working of each of them. This form provides the basic rate to which I have referred and in accordance with which the architect's compensation is to be computed. It provides that the owner shall reimburse the architect for the cost of transportation and living incurred by him and his associates in the course of their

duties connected with the work, and shall reimburse him also for the cost of the services rendered by heating, ventilating, and mechanical or electrical engineers. In the case of the erection of the ordinary home of moderate cost the transportation charges will be negligible and there will be no living expenses to be charged by the architect. These living expenses refer to cases where what is known as a "clerk of the works" or a resident superintendent is employed. I shall have occasion to refer to this point hereafter. Briefly, however, a "clerk of the works" is one who is employed to reside at the place where the job is under way and give to it the continuous and detailed supervision which is not given, ordinarily, by an architect under his agreement to supervise the work. In the ordinary case, also, there will be no charges for ventilating, or mechanical or electrical engineers.

The contract covers further the point to which I have referred of the letting of the work under separate contracts. It states that the basic rate agreed upon is to be used when all of the work is to be let under one contract but that, if the owner should determine to have certain portions of the work executed under separate contracts, the architect's burden of service, expense, and

responsibility would be thereby increased and the rate in connection with such portions of the work shall be, in such event, 4 per cent. greater than the basic rate. For example, if a basic rate of 6 per cent. be agreed upon and then the work be let under separate contracts, the compensation to be paid the architect would be 10 per cent. on the cost of the work which is executed under separate contracts.

The contract further provides that, in the event that the owner determines to have substantially the entire work executed under separate contracts, the additional 4 per cent. rate shall be paid on the entire work. It is also provided that, in any event, the basic rate shall apply without increase to contracts for any portions of the work on which the owner repays to the architect the engineer's fees and to the cost of articles purchased under the direction of the architect, but not designed by him. These latter provisions are not always included in the contract with the architect. In some cases special arrangements regarding his fee on the articles designed by him are entered into, and in many cases the 4 per cent. additional compensation is allowed to him on work done under separate contracts, whether the engineer's fees be repaid to him or not.

The Standard Contract provides further that: "If after a definite scheme has been approved, the owner makes a decision which, for its proper execution, involves extra services and expense for changes in or additions to the drawings, specifications, or other documents; or if a contract be let by cost of labour and material plus a percentage or fixed sum; or if the architect is put to labour or expense by delays caused by the owner or a contractor, or by the delinquency or insolvency of either, or as a result of damage by fire, he shall be equitably paid for such extra service and expense."

This provision raises a question which is of the utmost importance to the owner. The question of the additional compensation to be paid to the architect for changes made by him in the plans, or for new sets of plans prepared by him at the request of the owner, lies at the root of a large percentage of the disputes which arise between the owner and his architect. It is important, in the interests of each of them, that the owner understand exactly what the situation is in this connection and what his obligations to the architect are to be in the event of the preparation of new plans by the latter, or in the event of changes in the plans made at the direction of the owner.



The contracts in use by many architects differ from the Standard Form on this question of additional compensation for changes and new plans. I shall try to make plain the general principles involved and the obligations of the owner under the various forms of agreement commonly in use by architects on this point.

The ordinary home builder has not a very clear understanding of the service which the architect is to render in the preparation of plans. It is a fair statement, I think, that the majority of laymen employing an architect to prepare plans for a residence are under the impression that the architect undertakes, as a part of his service and without extra compensation, to make changes in the plans and additions to them to whatever extent may be necessary finally to satisfy his employer. It is the purpose of the foregoing contract provision to meet this situation and to negative this presumption.

The understanding of nearly all architects, and certainly the established custom of the profession, is that the architect, for the basic fee agreed upon, will prepare studies and plans in accordance with the ideas first given to him by the client. If, however, after these have been prepared, the client changes his mind and requires new plans to be made or additions to be



included or changes in the original plans to be provided for, the architect will undoubtedly expect to be compensated for the extra services rendered by him in this connection.

In substantially every case some changes will occur to the client as desirable, while the work is going forward or during the period that the plans are in course of final preparation. This is natural and almost inevitable. If these changes are minor the architect will probably make no charge for them. If they are substantial, but do not require a redrafting of all of the plans, he will expect to be paid the reasonable value of the services which they necessitate. If they are radical enough so that they affect the whole conception of the plan, and require a new study of the problem and entirely new plans, he will doubtless expect to be paid for the new plans substantially the same amount as for the set first prepared.

If the contract provides, as it ordinarily does, that the architect shall be paid one fifth of his fee when the preliminary sketches are prepared and, after he has prepared a set of preliminary sketches, the client changes his mind and directs that sketches of a quite different character be prepared, the architect will expect to be paid the one fifth fee for those which he already has

prepared and, in addition, one fifth of his fee percentage on the cost of the work done under the second set of sketches.

Similarly, if the architect has proceeded with the second stage of the plans and has prepared working drawings, and an additional two fifths of his fee has therefore accrued, he will expect, if he is called upon to change his working drawings entirely, to receive, in addition to this two fifths, a second two fifths computed on the cost of the work done under the new working drawings.

In the usual case the changes called for by the client will materialize during one of these two preliminary stages, either before the working drawings have been prepared, or before the contract has actually been let and the building commenced.

The situation is somewhat analogous to that of a client who calls upon a lawyer to prepare a will or contract along certain specified lines. If, after the lawyer has prepared the document, the client changes his mind and decides that he desires to have it drafted along different lines, and directs the lawyer to proceed accordingly, he will naturally expect to pay for the service given by the lawyer in preparing the first form as well as that given by him in preparing the

second form. For some reason, however, the public has never understood as clearly as it should the position of the architect with respect to this phase of his compensation, and has shown a disposition to assume it to be part of his duty to make successive sketches and plans, in any reasonable number, until they meet the approval of the client in all details.

The Standard Form of contract, it is true, does not state in so many words that, where a new set of plans is prepared, the architect is to be paid for them the same fee substantially as that due him for the first set, subject only to the variations of the cost of the work under the two alternative sets of plans. It states that he is to be "equitably" paid for the services rendered. This leaves it open, to be determined as a question of fact, what will constitute such an equitable payment. As a matter of fact, the result will probably be substantially the same, in a case where the basic fee originally provided for was not a specially fixed lump sum fee, but was both reasonable and customary. If the architect's fee was fixed at 6 per cent. of the cost, the court, in determining the amount due him for a second set of preliminary sketches, would thus probably decide that one fifth of 6 per cent. on the cost would be an equitable payment for these

sketches, exactly as it was an equitable payment for the first set of sketches.

The moral to be drawn from the foregoing discussion is obvious. In the first place, the client, if he is not willing to conform to the usual custom and to pay an extra charge if he requires that new sketches or plans be made, should raise this point specifically with the architect in the first instance, and secure an agreement which will coincide with his intent.

A specific agreement will take precedence over any amount of custom. If the architect should agree to make any reasonable number of sketches or plans, even though they differ substantially and not merely in details, for one fixed fee, he would be bound by this agreement. An agreement to this effect, however, is unfair to the architect and, in the case of residential work especially, few, if any, architects of standing or established practice would consider such an arrangement. By so doing they would commit themselves to the preparation of plan after plan to meet the changing whims or views of a client.

The ordinary owner has no idea of the real expense which an architect incurs in the preparation of preliminary studies and working drawings. It is quite natural, perhaps, that he



should, looking at the completed plans, imagine that the time and expense which they have involved are comparatively slight. The fact is that the cost to a practicing architect of the preparation of plans is not only substantial but, in many cases, extremely heavy.

I recently had occasion to consider a case where plans had been made for a structure costing about \$4,000,000. The architect's fee was fixed at 6 per cent. The cost of the plans to the architect, including his overhead and other charges, amounted to something more than three fifths of his total fee. The owner must realize that, before the finished studies or plans are produced, the architect and his organization have been called upon to give much time and study to the best solution of the problem and to the preparation of tentative and entirely preliminary schemes. In this respect, again, the services of the architect are quite analogous to those of an attorney preparing some important contract. The client ordinarily will see only the final form of the proposed contract as it is submitted to him by his lawyer. He will not see, and will not appreciate, how many preliminary drafts of the contract have been prepared, before the final satisfactory result has been



worked out, or how much time has been given to the study of the various legal points which the contract involves.

The real remedy of the prospective builder is not to attempt, unfairly, to bind his architect to the performance of extra services without fair compensation. His remedy is to decide as definitely as possible, in the first instance, on the type of house which he desires and on the general scheme and layout. If he knows what he wants and makes his wishes reasonably clear, and the architect follows his directions, it will not be necessary for him to request many substantial changes in the drawings as submitted to him. Some changes there will undoubtedly be. If they are not many or substantial the architect will, in most cases, waive his technical right to charge for them, and seek no extra compensation. In any event the extra charge if it is sought will be, under such conditions, relatively small. The important point is so to handle the matter that the architect will not be called upon to make entirely new studies or drawings, but merely to make changes—as few as possible—in the sets which he first prepares.

The right of the architect to extra compensation, under any such conditions as those which we have discussed, must depend upon the

changes required being caused by a decision of the owner which is at variance with his original directions. It is clear that if the architect is requested to prepare plans along a certain line, and prepares plans of a substantially different type and character, he will not be entitled to seek extra compensation if the owner rejects the plans prepared and requests the preparation of a new set, conforming to his original directions. To allow a claim by the architect for extra compensation under these circumstances would be to penalize the owner for the failure of the architect, whether deliberate or unintentional, to follow the directions of his client. The courts will recognize no such right in the architect. No reputable architect will seek to enforce any such claim.

So far as additions to, as distinguished from changes in, the drawings, are concerned, and so far as changes in or additions to the specifications are concerned, the same principles will apply. If the owner decides to add some comparatively minor features to the work as planned, the architect will not ordinarily charge him for the work involved in adapting the plans to cover them. If the additions are substantial and entail a considerable expense to the architect, he will probably expect extra compen-

sation for his work in connection with them. Changes in the plans which are radical will entail radical changes in the specifications. Minor changes in the plans will mean little or no change in the specifications. If the changes are slight the probabilities are that no charge will be made for them; if they are substantial, and necessitate the redrafting of the plans and specifications, an additional fee will probably be charged by the architect.

A clear distinction must be made between the extra compensation which we have just been discussing and the additional compensation which the architect will receive, in any event, where the changes increase the cost of the work. If, for example, an architect is to be paid a basic fee of 6 per cent. on the cost of the work, and changes are ordered by the owner which result in increasing the cost of the building 50 per cent. over what it would have been under the scheme first suggested, the architect will receive his 6 per cent. on the increased cost. He will, also, in such event, have the right to expect, under the usual custom, that he will receive extra compensation for the additional work made necessary by the changes.

The extra compensation accruing to him by reason of the increase in cost cannot fairly be

said to compensate him for the additional time and expense which the changes have necessitated. At first glance, this may seem to be an unfair proposition from the point of view of the owner. It will not seem so, however, if analyzed. If, in the first instance, the owner had directed that plans of the type finally specified be prepared, the architect would have received his full 6 per cent. commission on the cost of the building. Obviously, in such a case, the services of the architect would be materially less than in the case where, in arriving at the same result, he has had to prepare a preliminary set of plans and then, owing to a change in the owner's decision, has been forced to make revised plans before the work has been proceeded with. It is fair that he be paid something to cover the extra expense to which he is put, where he is compelled to perform these increased services by the failure of the owner to know his own mind in the beginning.

A variation of the foregoing situations is presented where a fixed fee, rather than a percentage, is agreed upon and, after the first studies and drawings have been prepared, the owner changes his mind and directs that different drawings be submitted.

Let us assume that an architect has agreed to



draft plans for a residence, for the sum of \$5,000; that he proceeds with the work and completes the preliminary studies; and that the owner then directs him to make entirely different studies. If the contract follows the usual custom and provides that one fifth of the fee shall be payable on completion of the preliminary studies, the architect at this point will have earned \$1,000. If the owner then directs that entirely different studies be prepared, the architect will be entitled to his extra compensation for their preparation. This compensation, however, in the absence of a specific provision in the contract to the contrary, will not be necessarily an additional \$1,000. The courts have held that where the architect proceeds with the changed work, without any agreement as to his compensation for it, he will be entitled to recover the reasonable value of his extra services, irrespective of the charge fixed for the original studies.

I have in mind, as I write, a case involving a considerable sum of money, where this very situation arose. The original fixed charge was absurdly small for the services to be rendered. The architect was called upon to make, not one set, but a number of distinct sets, of plans. He claimed, and rightly, that he was entitled to ex-



tra compensation in accordance with the usual value of architects' services.

If the client employs an architect on a lump sum basis, and desires to avoid misunderstanding as to extra services, he should provide in the contract that, where changes are made at his direction, varying the scheme, the extra compensation shall be computed on the basis of the compensation mentioned in the contract. In the supposititious case to which I have referred above, if the contract had been worded in this way the architect would have received for his services, in the preparation of the second set of sketches, the same amount which he received for the first set, namely, one fifth of the \$5,000.

Whether or not it be fair so to draft the contract will depend on the fairness of the original lump sum specified as the architect's compensation. If this is less than the ordinary percentage on the cost would be, it would be unfair to expect the architect to carry the cut rate into the realm of extras as well. If the amount specified, on the other hand, is arrived at by mutual consent, as an estimate of the amount of the usual fee on the estimated cost, it would be quite fair and proper to make it the basis upon which the charge for any extra work shall be computed.

There is another form of contract, between the architect and his client, the use of which is increasing and which should logically be mentioned at this point. This is the so-called cost-plus-fixed-fee contract. By its terms the architect is paid a fixed lump sum fee and, in addition, is paid the actual cost to him of his services including an allowance for general overhead. Under this form of agreement, instead of charging 6 per cent. on the cost of the building, the architect will be paid a fixed fee of, say \$5,000, plus his cost, plus 100 per cent. thereof (or whatever per cent. may be agreed upon) as overhead. The cost will include a payment at a stipulated rate for the time given by the architect himself, the amounts of the salaries of his assistants, draftsmen and the like, and the cost of materials, travelling expenses, telegrams, and similar items. The amount of the overhead to be added to this will vary materially according to the character of the architect's organization. In some offices the overhead will be 100 per cent. or perhaps more. In others it will be very much less.

Under this arrangement, the architect would be paid the actual cost of his extra services, by including it as part of the office cost under the contract. It would be no fairer, however, under such a contract, to expect him to make succes-

sive and different sets of plans without real additional compensation, than it would be to expect him to do this under the ordinary form of contract. The fact that the fee is set at a lump sum would not alter the theory of the case, inasmuch as it would still be assumed that the fee should be in payment of the work originally specified. If the client directs changes to be made in this work requiring additional services, the architect may still justly claim additional compensation for these services. This compensation would be, as in the other case, the fair and reasonable value of the extra services performed allowing, however, for the fact that the cost to the architect of the performance of the extra services would be included in the cost items paid to him by the client under this alternative form of contract.

When a straight percentage fee is charged by the architect, the amount so fixed includes the architect's cost. In arriving at the fair and reasonable value of the services, under the cost-plus-fixed-fee form of contract, it would not be fair to the client, therefore, to fix the compensation for the extra work at the customary percentage. It would be necessary rather to estimate what part of the percentage the reasonable value of the architect's services represents, as distin-

guished from his cost, and then to allow this amount to the architect as the extra compensation due him.

The advantage of the cost-plus-fixed-fee contract is that the architect's fee as distinguished from his cost charge is not dependent on an uncertain element, such as the ultimate cost of the building operation. The disadvantage is that which characterizes to a greater or less extent all cost-plus contracts, namely, the fact that the client is dependent on the figures of the architect as to the latter's costs. Where these costs mount to a substantial figure, as they will in the ordinary case for reasons which I have already stated, the client is likely to feel that they are unduly heavy and that the architect is increasing unfairly the cost items. This feeling may or may not be justified in a given case. If unjustified it will still lead to friction and unpleasantness, and will hamper the execution of the work. If justified, it will mean that the architect has taken advantage of the client. In such event, the latter will have his remedy and the right to check the items, doubtless, but it will be more a remedy in name than in fact.

The chief difficulty is likely to arise, in my opinion, not from any lack of fair intention on the part of the architect, but from an undue



increase in his costs, or from a feeling on the part of the client that the costs have been unduly increased, as a result of a lack of proper organization and business methods in the office of the architect. Given an architectural firm with a business organization which functions properly, and the purpose of the ordinary architect to show absolute fairness to the client, the plan has many advantages and is one well worth the consideration of the home builder.

This cost-plus-fixed-fee arrangement is the outgrowth of the so-called "cost-plus" forms of building contracts, which have come into common use in recent years. These contracts are open to much more serious objection, however, than the cost-plus form of architect's contract, as our later discussion of them will indicate. If the cost-plus contract is entered into with the architect it is much better to provide a fixed lump sum for the fee to be paid, in addition to the cost, rather than to provide that there shall be paid the amount of the cost to the architect, plus a fee which equals a certain percentage of the cost of the building. Under the latter arrangement the architect's office, no matter how good its intentions may be, will not have the same incentive to keep down the building cost, as it will in the case where additional cost



in the performance of the work does not mean a proportionate increase in the fee itself.

There can be no question of the right of the owner to suspend or abandon the building operation at any time, if he desires to do so. Neither the architect nor the contractor has the right to compel him to continue with the building. Similarly, there is no question of the right of the owner to discharge the architect and employ a new one at any time. The employment of the architect is a contract of personal employment. The client can terminate it just as he would terminate the employment of a physician or a lawyer.

The statement that the owner may suspend or discontinue the work or change the contractor or architect does not mean, however, that he can do this with impunity. If his discontinuance of the work or his dismissal of those whom he has employed is a breach of his agreements with them, he will be held liable legally in damages for this breach. The question of his liability in this connection will depend entirely on the terms under which the contractor and architect have been employed. If the architect was employed on the understanding that he should act as architect of the building to completion, with no provisions for his allowing the owner to sub-

stitute another architect or suspend the work, the owner, upon such substitution or suspension, will be liable to the architect for the latter's damage. This damage would be the profit which the architect would have made on the job, had it been proceeded with under his direction, as originally contemplated. Similarly, in the case of a contractor, if there be no provision for the termination of the contract, the contractor, on the refusal of the owner to complete, will be entitled to collect, as damages, the profit which he would have made had the contract been carried out as agreed.

As a matter of actual practice it is becoming more and more customary to have the construction contract, and the agreement between the owner and the architect, provide specifically for the contingencies of a suspension or termination of the work or a change of architects. The American Institute form of contract between the architect and owner clearly contemplates the right of the owner to suspend or abandon the work. If this is done the architect will be entitled to recover the proportion of his fee which has accrued up to that time. The Institute contract form, on this particular point, is not fair to the architect. Its intent undoubtedly is to provide that the architect shall be paid in

accordance with the contract terms for all of the work which he has done up to the time the work is suspended or abandoned. As a matter of fact, however, as its provision on this point is worded, the architect might not be able to recover for all of the services rendered by him. If, therefore, the architect presents to the owner a form of contract differing from the Standard Form in its clauses covering this contingency, the owner need not feel necessarily that the architect is intending to take any unfair advantage.

Inasmuch as the employment of the architect is a contract of personal employment the death of the architect terminates the contract. In the event of such death, the client will be obligated to pay to the estate of the architect any portion of his fee due at the time of his death. He will be free, however, to select a new architect to complete the work.

A variation of this situation will arise where the architect who died was a member of a firm. If he was employed individually, his death will terminate the relationship. If, however, the firm was employed as such, even if the architect dying had attended to the work, the firm should have the right to proceed under the contract of employment and complete the work for the compensation specified. If it was agreed, as a

term of the firm's employment, that the architect who has died should give his personal attention to the work, this situation will be again changed. Under these conditions, the firm will not be in a position to insist on its right to complete the work, inasmuch as it will not be in a position to comply with one of the essential terms thereof, namely, the personal attention to the job of a member of the firm who is no longer living.

The death of the architect is important, also, in its bearing on the contract between the client and the contractor. The contractor has a vital interest in the architect who is chosen. Owing to the many points on which the architect is called upon to act as arbitrator, it is important to the contractor that the architect be a man possessed both of ability and of a sense of fairness. Many a contractor will enter upon a job under one architect, whom he trusts, which he would not under any conditions undertake under the direction of another architect whom he mistrusts. If, therefore, the construction contract provides that the work shall be done under the direction of a specified architect and the architect dies, and the contract has no provisions with respect to his successor, the contractor may well claim that he is entitled to terminate his employment and proceed no further, unless the



architect chosen to succeed as professional adviser is satisfactory to him.

To prevent this situation arising, it is now customary for the construction contract to provide that, in the event of the death of the architect, the owner shall have the right to appoint a capable and reputable architect, who shall have the same status under the contract as that held by the architect who has died. This provision, in the Standard Form of contract to which I have referred, is broadened to cover not only the death of the architect but the termination in general of the employment of the architect. This would include not only the termination of his employment by death but the termination of his employment in any other proper manner. The owner will do well to have a provision of this kind inserted in the contract. He cannot do better in this respect than to follow the wording of the Standard Form unless it be, perhaps, to include in the provision a specific reference to the death of the architect, so as to make it clear that the clause covers termination by death, as well as for any other cause.

Whatever form of contract is employed the essential considerations are that the owner, on the one hand, shall have the right to



abandon or suspend the work at any time, without liability to the architect for the full profit which the latter would have made on the job had it been carried to completion, and that the architect, on the other hand, shall be entitled to receive, in case of such a suspension or abandonment, payment for all of the work which he has done pursuant to his contract up to that time.

With respect to the right of the owner to employ another architect, there is much to be said on both sides. On the part of the owner, it is to be remembered that in a matter of such importance as the building of his home, it is not fair that he should be asked to continue with a professional adviser with whom he may have found it difficult to work efficiently. From the point of view of the architect, it is equally an injustice that he should be forced to yield his place to another and forego the full profit which he would have made had he continued as architect during the whole building operation, as it was originally contemplated he should do. Balancing the equities on each side, it would seem fair in the ordinary case that the owner should have the right to change his adviser, provided he make payment to him in full of his agreed compensation for the work actually done by him, and provided especially that he does not

allow the architect who is substituted to continue the work under the plans of the architect discharged. This would manifestly be a rank injustice to the architect. The plans are the children of his brain, and it is not fair that any owner should expect to have the right both to discharge the architect and also to continue to use the plans which he has created.

This raises a question upon which there is very general misunderstanding, both in the minds of architects and in the minds of laymen. It has long been considered by the architectural profession that the plans belong to and remain at all times the property of the architect. In the absence, however, of a specific agreement to the foregoing effect, it has been held by the courts that the plans are the property of the client who employs the architect and pays for them. If the plans are to be considered the property of the architect, therefore, it must be as a result of a definite agreement to this effect between the client and himself.

The inclusion in the contract between architect and client of a provision to this effect has now become the general rule. Such a provision is both in accordance with the recognized custom of the architectural profession and in accordance with what is fair and proper. The

provision of the Institute contract on this point is that "drawings and specifications as instruments of service are the property of the architect whether the work for which they are made be executed or not." I have had occasion to observe, in more detail perhaps than most, the difficulties which beset architects in their practice. I feel, as a result, that the foregoing contract term might and should, in justice to the architect, be somewhat broadened, so as to cover specifically the contingency of an attempt to use the plans for the completion of the building under the direction of another architect.

In fairness to the architect, it will be entirely in order I think to provide that in the case of the discharge of the architect, or the failure to re-employ him after a recommencement of the work following its suspension, the plans which he has prepared shall not be used, unless he is employed as the architect of the work or, having had the opportunity to act as such, has refused. If the owner invites him to continue the work and the architect refuses, or is unable for any reason to do so, it is manifest that the owner should have the right, under such conditions, to proceed with the work under the original plans. In other words, he should not lose the benefit of the plans because the architect has

refused to continue with the performance of his services. If he does use the plans, however, provision should be made for the payment of fair compensation to the architect for their use.

This compensation might justly be the amount of his percentage commission on the total cost of the building as completed, less such proportion of it as would represent his services in supervising the work. Inasmuch as he would not be called upon to supervise the work under such conditions he should not be entitled to any compensation therefor. The broadening of the above provision with respect to the use of the plans for the completion of the building is in the interest of the owner as well as of the architect. As the Institute contract is drawn, it is questionable whether the owner would have the right to use the plans in any event if, after suspension, the architect refused to continue with the work, in view of the unqualified provision that the plans remain at all times the property of the architect.

In the great majority of cases, it will be the desire of the architect and of the owner to act with strict fairness, the one to the other, and no difficulty will be experienced in arriving at an adjustment of any problems which the work may present. It is the exceptional case which must



be guarded against, however, and which may cause unpleasantness and loss on both sides, unless the rights of the parties have been made clear. There will be no difficulty in the first instance in arriving at a proper understanding where both sides are reasonable. The execution of a proper contract in the beginning will obviate many misunderstandings and difficulties at a later date.

A word of special caution is in order with respect to so-called representations of cost by the architect. Many laymen employing architects assume that the latter are in a position to estimate, with substantial accuracy, the exact cost of the work to be done. One of the first and most natural questions which a client is likely to ask an architect is, "What will this work cost?" The fact is, that while an architect can estimate much more closely than most the cost of the work, he cannot do more, in the last analysis, than give his best guess with respect to it, based on his knowledge and experience. The home builder will do well to remember, therefore, that any statements as to cost made to him by the architect are ordinarily merely estimates, and that he should not rely unqualifiedly upon their accuracy.

In some cases, the client has made an agree-



ment with an architect that the cost of the building should not in any event exceed a specified sum. If the architect is willing to make an agreement of this character, it is undoubtedly a protection to the client to have him do so. On the other hand very few, if any, high-class and businesslike architects will, under ordinary conditions, enter into any such agreement. They realize, more than most, the uncertainties of building costs and conditions and, for this reason, they quite properly are not willing to have their compensation depend on the cost of the building falling within a guaranteed amount. Again, if they were to make such an agreement, they might well lay themselves open thereby to claims for damages on the part of the client, in the event that the building costs more than the amount specified. The architect will be glad to discuss the matter of cost with the owner and to give him freely the benefit of his advice and experience on this point. In fairness to the architect, however, and in order not to mislead himself, the owner will do well to treat these discussions as estimates and not in any sense as guarantees.

Another entirely reasonable provision of the contract between architect and owner is that the owner shall give prompt attention and con-

sideration to plans submitted, and shall render promptly any decisions which it is necessary for him to make. It is obvious that the architect should not suffer any loss through delays due to the failure of the owner to act with reasonable promptness.

The duty of securing an accurate survey of the property, where one is necessary, usually devolves upon the owner. If, for any reason, the owner desires to put the responsibility for this upon the architect, he should see to it that a provision to this effect is included in the contract. On the other hand, if the contract is silent in this connection and the architect proceeds with his drawings, without having a proper survey or requesting the owner to provide one, the architect may well be held liable for any damage resulting from mistakes in grade and the like.

The architect's commission, as I have said, is based ordinarily upon the total cost of the work. This means what the phrase connotes, namely, the actual total cost of the building operation, not including however the fees of the architect or engineer or the salary of a clerk of the works. In some cases, as the Institute agreement points out, labour and materials will be furnished by the owner below their

market cost or old materials will be used. In such cases, the "cost of the work" may be interpreted under the Institute contract to be the cost of the materials and labour, as it would have been if the materials had been new and the labour had been fully paid at market prices in effect when the work was ordered, plus the expense and profit of a contractor. This exception does not appeal to me as one which is fair to the owner in the ordinary case. If the owner is in a position to provide materials and labour at a saving, he will I think find the architect usually quite ready to allow him to take advantage of such a condition, and content to have his professional fee figured on the actual cost, without basing it on a fictitious valuation of current market prices as distinguished from the actual price.

The mention of a clerk of the works brings us finally to a consideration of the matter of the supervision of the work. This phase of the architect's services is of vital importance to the owner, and the mutual obligations of the parties in this connection should be clearly understood. The ordinary layman has rather a dim idea of the meaning of the term "supervision." In a general way, he assumes that it means that the architect is to look after the work and see

that it is properly performed. He is not clear, however, as to just what this supervisory service is to be, or what the exact obligations of the architect are with respect to it.

Supervision does not mean superintendence. The word "superintendence" as used by architects and builders connotes a more or less continuous oversight of the work done. The word "supervision" connotes the ordinary supervision of the architect from time to time during the progress of the work. Where superintendence is desired, a so-called clerk of the works or resident superintendent should be employed. His employment will ordinarily be at the expense of the owner.

It is obvious that it would be an absurdity to expect an architect to watch personally every step of the building operation. The architect is under no obligation to see every joint fitted, beam laid, and nail driven. He is under the legal obligation to give reasonable and intelligent supervisory services. He is expected to go to the job at reasonable intervals, look over the work done since his last visit, check up on the general progress made and in this sense supervise the work. Under modern conditions, also, misunderstanding sometimes arises with respect to whether the supervision of the architect



is to be given by him personally in every instance. Many clients have the impression that the architect agreeing to plan and supervise the work is obligated to supervise it, in all details, in person, and cannot delegate this authority to others. This feeling is, perhaps, natural and, in many ways, is consistent with the fact that the employment of the architect is a personal one and that the client has the right to expect the personal attention of his professional adviser, accordingly.

Nevertheless, the courts, in interpreting the mutual rights of the parties in this connection, have adopted a common-sense view of the practicalities of the situation. They have held that the architect is responsible for the general oversight of the work done and must see to it, personally, that the making of the plans and the supervision given is properly attended to. On the other hand, they hold that this does not mean that he must personally attend to every detail, guide the pencil on every drawing, and with his own eyes inspect all of the details of construction. He has a right to delegate matters such as these to his associates or employees so long as the responsibility of the work performed remains his, and so long as he maintains an adequate personal oversight of the work which

is done by his employees. He may therefore work out the general scheme for the plans and turn it over to his draftsmen and employees to place in proper form. It will be necessary for him, however, to check the plans when they have completed them and see that they meet with his approval. Similarly, in the supervision of the construction work, he may send a competent representative to examine the work done. He will, however, be responsible for the proper performance of his employees' duties, and will be expected to satisfy himself that the employee has properly supervised the work which has been assigned to him.

The owner and the architect may make any proper provision by contract that they may see fit, with respect to the manner in which the supervision is to be attended to. They may provide that the supervision, or other details of the architect's services for that matter, may be attended to entirely by his subordinates or agents. On the other hand, they may provide, if the parties so desire, that every detail of architectural service shall be rendered by the architect personally and that he may not delegate any part of this service, either with respect to the preparation of the plans and specifications or

the supervision of the work. A provision of this kind is quite valid, if it be agreed to. If the contract contain such a provision, the architect will be bound by it and, unless he performs personally all of the services in question, he will be guilty of a breach of the contract.

In the case of a private house there will ordinarily be no need to employ a clerk of the works. If the building operation is one involving a large amount of money, and is carried forward on an extensive scale, the employment of a clerk of the works will doubtless be advisable. In ordinary residence work, however, where the sums involved are reasonably moderate, the customary supervision of the architect will suffice. The number of visits to be made by the architect will vary in accordance with the progress of the work. At certain stages it will be necessary for him to be in attendance much more often than at others. If he is conscientious in his work the owner can well leave it to him to give such supervision as may be necessary.

The owner, in the ordinary case, will naturally be intensely interested in the work as it progresses. As a result of this interest it often happens that he will unthinkingly issue orders to the contractor, without consulting the ar-

chitect. This he should not do. It is in the interests of the owner, just as it is in the interests of the architect, that the authority of the architect should be made as definite and firm as possible. If the owner issues directions to the contractor direct it will tend to weaken the architect's authority and may result in much added expense. A direction to the contractor, which to the owner may seem to call for a very simple expense, may in reality involve other structural changes which the architect, if consulted, would have appreciated, but of which the owner has no understanding. The architect is the professional adviser of the owner in the building operation and the owner should not go over his head in dealing with the builder.

There has been a marked tendency, in recent years, to provide in the agreements between architects and owners for the arbitration of any matters in dispute between them. The theory underlying arbitration is a good one and there can be no question that any proceeding which will keep parties out of court is ordinarily desirable. An arbitration is, however, not an unmixed blessing, and in some cases, especially in jurisdictions where cases can be reached for trial promptly, I am inclined to feel that the arbitration plan may be overdone. In any event, the



owner will do well to consider whether he wants to leave everything to arbitration and, if so, what provisions with respect to arbitrators will be fair and proper.

The tendency of arbitrators, quite naturally perhaps, is to "split the difference." This procedure may or may not work out justly. In the ordinary case there is something to be said on both sides, and in such a case a compromise may be substantially just. On the other hand, where one party may be entirely in the wrong, an arbitration may nevertheless result in a compromise verdict, which will be an injustice to the other party. I am not at all opposed to arbitration, and believe in any system which will help to do away with the expense, delays, and uncertainties of the ordinary court proceeding. I would merely caution the owner not to accept arbitration as a cure for all the ills which may characterize any disagreements between himself and his architect or contractor.

## CHAPTER IX

### THE CONSTRUCTION CONTRACT AND BUILDING OPERATION

**T**HE contract between the owner and the builder is in many ways the most important document relating to the building of the home. It is this contract which governs the respective rights and liabilities of the owner and the contractor. If it is properly drawn in the interests of the owner these rights will be protected and he will be insured, as nearly as he can be insured, a proper job and full value for the money which he expends. If it is not properly phrased it may mean—and in many cases it will mean—substantial losses to him, excessive claims for extras, controversies with his builder and many unnecessary complications.

In the ordinary case, when the plans have been completed they will be submitted by the architect to builders for bids. The architect will gladly suggest the names of builders with whom he has had satisfactory business dealings,

and will submit the plans to these builders and to such other builders as the owner may desire. The builders will examine the plans and specifications and will submit their bids for the work. Upon receipt of the bids the owner will be in a position to accept the bid which he considers the most advantageous. Ordinarily, this will naturally be the lowest bid received. This is not always the case, however, as it often happens that a bid which is somewhat higher than another may, owing to other considerations, be more acceptable. If there is not a great difference between two bids, and one is submitted by a builder whose work and reputation for fair dealing is well known, it may be good business to accept his bid, if the builder submitting the lower one has not an equally satisfactory and established reputation.

It must be borne in mind that the submission of a bid by the builder does not constitute a contract binding upon him. It is merely an offer and does not ripen into a contract unless and until it is accepted. Upon its acceptance by the owner, a contract is thereby consummated. If the acceptance of the owner, however, interjects new elements into the situation, it will not operate to transform the bid into a contract. The acceptance must be of the offer as made.

If, instead of accepting the offer without reservations, new conditions are specified as a term of the acceptance, no contract will come into being until and unless the contractor, in his turn, accepts the new conditions suggested by the owner.

When the bid has been received and found satisfactory and accepted, it is then the usual custom to place the understanding between the parties in the form of a written contract. This contract is known as the "building contract" or "construction contract." There are two general classifications of building contracts ordinarily in use. The one is the so-called cost-plus contract and the other the fixed-cost or lump-sum contract. In the case of the cost-plus contract, the contractors will not be asked to submit bids, although they may be asked to submit estimates for the guidance of the owner. Under the cost-plus contract, the owner, in substance, agrees to pay to the builder the actual cost to the latter of the work done plus a stipulated fee. In the case of the fixed-fee contract, the owner agrees to pay the builder a stipulated fee for the whole job, irrespective of what the cost of the job may be to the builder. As between these two forms of contract there can be no question, I think, that the fixed fee or lump-sum contract is by far the safer form of contract for the average home



builder. Under this form of contract, the owner knows exactly what the work called for by the plans and specifications will cost. Under the cost-plus contract, he has no assurances with respect to the ultimate cost. He is in the hands of the builder and the architect and at the mercy of sudden increases in building costs and materials. No matter how high-class and conscientious a contracting firm may be, the tendency of the organization under a cost-plus contract is to push the work less energetically than under a fixed-fee contract.

Where the contractor agrees to perform the work for a fixed sum, it is to his interest to push the work through to completion with a minimum of delay, so that he may not be exposed to the dangers of shifts in material and labour costs and may cut down so far as possible the amount of his office and organization overhead applicable to the job. Where the cost-plus contract is used this incentive is lacking. The conscientious contractor will undoubtedly make bona fide efforts to push the work to prompt completion. If, however, it be known throughout his organization—to the superintendents, to the workmen and to all those employed in the building operation—that it is a cost-plus contract, there will necessarily be lack-

ing the same concerted effort to force the work to completion as one finds in the case of the fixed fee job.

There is a modification of the cost plus contract which is often employed. In this modified form of contract, there is inserted what is called an "upset price." It is agreed, as in the ordinary form, that the contractor shall be paid his cost plus a fixed percentage or specified fee, but it is in addition provided that the total expense to the owner for the job, including the architect's services, shall not exceed a definite amount. This form of cost plus contract is preferable to the form which lacks this provision. It gives to the owner the definite assurance that the cost will not exceed the figure mentioned. On the other hand, the contractor in such a case will usually insist on fixing the upset figure at an amount which he estimates will give him ample margin.

Where the owner is a man of large means, to whom a variation of a few thousand dollars in the total cost is a matter of no particular moment, the cost-plus form of contract may be satisfactory. To the ordinary home builder of moderate means, however, neither of the cost-plus forms are as satisfactory as the fixed-cost method. Under the latter method, the price is

ordinarily arrived at in competition between various builders and the savings to the owner, over the amount which he would pay on the cost-plus basis, is likely to be substantial.

The American Institute of Architects has prepared various so-called Standard Forms of building contracts, both of the fixed-cost and the cost-plus types. Many architects use these forms. Many other architects, especially the larger offices, have prepared special forms of their own. The Standard Forms of contract are excellent in many ways and probably as good as any forms could be which are prepared with the idea of meeting the needs of all concerned. In many cases, however, the special form which an architect has prepared, based on his experience and practice, will be found to be preferable.

The construction contract is a sufficiently important document to the home builder, so that the latter can well afford to have his attorney pass on the contract before it is made. The architect will be glad to advise him in connection with the terms of the contract. It is fundamentally, however, a legal proposition and much difficulty and possible loss will be obviated if, before the contract is entered into, the owner seeks and secures proper legal advice in connection with it. This is not a matter of any

great expense. Any lawyer experienced in building contracts can examine the proposed form of agreement promptly and advise his client with respect to it. There are various points which should be borne in mind, especially, in this connection.

The contract should provide that the drawings and specifications shall co-operate and, if any item is omitted inadvertently from the drawings but included in the specifications, it shall be considered as part of the contract and vice-versa. The specifications are voluminous and it is important that a clause of this character be inserted, so that there may be no ambiguity or opportunity for the contractor to question the extent of his duties and liabilities.

Probably the most important point to the owner in the construction contract is a proper clause covering the matter of "extras." It is common experience that no building operation is ever carried to completion without some extra charges resulting from alterations in, or additions to, the work. No matter how carefully the plans are originally worked out some changes will suggest themselves as the work progresses. These will become matters of an extra charge, and the owner should be clearly protected with respect to them. If the changes result in de-



creasing the cost of the building he should be entitled to the proportionate saving. If, as is ordinarily the case, the cost is increased by the addition of items not covered by the original plans and specifications, it is proper that he should pay for these, but his liability in this connection must be clearly limited and defined.

It is especially important that the contract should be so worded that the owner will not be liable to pay for any extra work, changes, or alterations made by the contractor, unless they have been made with the knowledge and approval of the owner. In some cases, it is provided that the contractor shall not be entitled to payment for any extras, unless they are authorized by the architect. In other cases, it is provided that the authorization of the owner is essential. The latter is the preferable form. A provision stating in substance that no charge for alterations, changes, or extras shall be valid unless the work has been preliminarily ordered in writing by the owner, and approved by the architect, will properly protect the owner.

The owner must bear in mind, also, that if changes are made they should be authorized through the architect and that it is bad practice and inadvisable, in his own interest, that he should directly authorize any changes. He

should consult the architect and have the orders to the contractor transmitted by the architect. Many complications have arisen as a direct result of a disregard of this rule. The home builder may thoughtlessly give orders to the contractor, without prior consultation with his architect. In giving these orders, the changes which he directs to be made may seem to him trivial and involving no great expense. These changes may, however, as I have already noted in another connection, involve structural changes which would be at once apparent to the architect, if he were consulted, and which will result in a very substantial extra charge. Aside from this practical consideration, the ethics of the employment of the architect, as a professional man, require that he should be consulted in matters such as these and that the owner should be scrupulous to respect the rights of the architect in this connection.

It must be borne in mind always that the architect is the arbiter and general directing head of the work, that he is employed for this purpose and that any action which tends to decrease his authority is inadvisable. We have seen in our discussion of the contract between owner and architect that there has been a tendency, recently, to cut down the authority of the architect and

to provide more freely than heretofore for the settlement by arbitration of any issues arising between the contractor and the owner. This has been especially true with respect to the supervisory duties of the architect. Assuming that the architect is conscientious and competent, I believe that the owner will ordinarily find it far more satisfactory to keep away from too broad arbitration provisions and to centralize his authority with respect to the work in the architect, so far as this may be practical.

Where the architect has an established reputation for ability and fair dealing, the builder will not be averse to investing him with broad authority. A conscientious architect will observe the rights of the builder just as he will observe the rights of his client, the owner. He will not, in order to effect a saving for the latter, take any unfair advantage of the builder, and the experienced builder knows that this is so and that he can expect a fair deal at the hands of the architect.

It is ordinarily provided that the decision of the architect shall control with respect to interpretations of the plans and specifications. This provision should be inserted by all means. If, in addition, the architect can be given authority to pass upon questions in dispute with respect

to extras, and all similar items involved in the building operation, the result will be satisfactory both from the point of view of the owner and from the point of view of the builder. The more the authority of the architect is strengthened, the more standing he will have with the contractor and the better it will be for all concerned.

The owner should understand that the architect has no right to assume any authority beyond the bounds of that granted to him under the building contract, and under the contract between the architect and his client. So far as the contractor is concerned, he is bound by the building contract but not, of course, by the contract between the client and the architect. The authority of the architect, therefore, from the point of view of the contractor, is based on the provisions of the building contract.

The contract must provide, also, for the case of emergency action. It is quite possible in any building operation that an emergency may arise, due to any one of a number of causes, calling for prompt action of a character which cannot be forecast when the contract is entered into. Some contracts provide that in case of emergencies the contractor can take such action as he deems proper. This provision is dangerous.



It is preferable to provide that the architect may direct that such action be taken as is necessary; and that the contractor shall be vested with a like authority only in the event that he has not been able to communicate with the owner or with the architect and secure their authority and directions.

An annoyance which is likely to be met with is that incident to the filing of mechanics' liens. As the work of construction progresses, it is important that a check be kept upon the accounts of subcontractors and materialmen. Mechanics' lien legislation has been generally adopted and is now generally in force throughout the United States. Under practically all of the lien statutes, the subcontractor or materialman, as well as the general contractor, is entitled to a mechanics' lien for work performed or materials furnished for the improvement of real property. The statutes differ in their phrasing and scope. Their primary purpose, however, is the same, namely, to give to those furnishing labour and materials for the improvement of the real property a lien against the property for any payments due to them.

So far as the general contractor is concerned, there need be no fear that he will file a lien unless there is a dispute between him and the

owner and, for this or for some other reason, the payments due to him are not made.

With respect to the subcontractors and materialmen, the situation is quite different. The owner has no direct dealings with them, as they are employed by the general contractor. Unless the owner, therefore, directly or through his architect, takes steps to assure himself from time to time that the materialmen and subcontractors have been properly paid, it is quite possible that he will awake some fine morning to the realization of the fact that, while he has in good faith paid the contractor, the latter has not met his obligations to those employed by him. If the contractor fails to pay for the materials or labour which have been furnished at his request, the materialmen and subcontractors will naturally file liens against the property and the owner will be forced to pay the liens or otherwise dispose of them, in order to release the property from this encumbrance. If the lien is not paid, the property can be released from its claim by filing a bond, which in effect takes the place of the security which the property afforded and guarantees the payment to the lienor, that is, the person filing the lien, of any sum which he may recover in the proceedings to foreclose the lien.

It is, of course, unjust that the owner should be called upon to pay the liens of those employed by the general contractor, where he has in good faith paid to the latter all sums due to him. To prevent his being called upon to do this, the construction contract should contain proper provisions requiring the contractor to hold the owner harmless from any liens filed by subcontractors or materialmen and to secure the prompt cancellation of these lien claims against the property.

Every properly prepared construction contract contains a clause giving to the owner the right to retain a certain percentage of all payments falling due under the contract, with a proviso that the balance so retained is not to be paid until the work has been finally and satisfactorily completed. This retained balance is one of the greatest safeguards which the owner can have. The larger it is, the more protection he receives. If the general contractor fails to complete the work properly and it is necessary to employ others for this purpose, or if liens are filed and the general contractor does not take care of them as he should, the owner, having in his hands this retained percentage of the contract price, is in a position to have the necessary work done or the claims against the

property liquidated, before making a final settlement with the general contractor.

As a matter of good practice, a capable architect will represent the owner in keeping in touch with the payments due to the subcontractors and materialmen, and will see that they are properly made. There is a vast difference between architects in the methods which they follow in issuing to the contractor certificates for the work done. These certificates are called for under the terms of the construction contract. Payments by the owner are made to the contractor as certificates are issued by the architect and in the amounts of these certificates. It is of vital importance to the owner that the certificates be accurate and that they be not issued until the architect has satisfied himself that the payment to the contractor, covered by each certificate, is due and should be paid. If an architect issues a certificate without proper investigation, and on the general assumption that the work covered by it has been performed, as is sometimes carelessly done, the owner, after paying the certificate, may find that he has overpaid the contractor or that he should have held up the payment of the certificate, by reason of some default or other circumstances of which he has not been advised.



A conscientious architect will carefully check the work done and will satisfy himself, before issuing any certificate, that there are outstanding no claims which can become an encumbrance upon the property either by way of lien or otherwise. In addition to this, he will often specify in the certificate the manner in which the money to be paid under it is to be disbursed by the general contractor. If, for example, he is about to issue a certificate for \$10,000 and knows that the general contractor, from this amount, should pay \$8,000 to subcontractors and materialmen, he will designate on the certificate the sums aggregating this \$8,000 and the respective contractors to whom they are to be paid. This procedure, in effect, imposes a trust upon the payment of the fund in the hands of the contractor, and obligates him, as a matter of good faith, to disburse \$8,000 of the amount in accordance with the statement on the certificate. If this statement is not correct and if he contests the accuracy of the architect's analysis of the situation and of the amounts due, it is incumbent upon him to so state before he accepts the certificate.

The advantage to the owner of an architect who is business-like in his dealings, and whose office is run on business principles, is especially

apparent in this matter of the issuance of certificates. If the architect has in force in his office a proper system of accountancy and checks on the work done, the owner will be assured that when he makes payment, on the certificate of the architect, he is receiving full value for it, that the work which it represents has been performed, and that there are not outstanding any claims of those employed by the general contractor which may develop additional expense at a later date.

As a matter of fact, the lien laws have been so liberalized of recent years, that an architect is now allowed in many of the states to claim a lien for his own services if the owner does not pay him the fee which is due. In some states, this lien will only attach in the event that the architect has actually supervised the work, as well as made the plans. In some, it will be granted without the element of supervision being present. In practically every case, however, it will be necessary for the architect to show that the building has actually been proceeded with. The courts will not grant the architect a lien for the preparation of plans and specifications where no work has been done. The theory of a lien is that it represents work and labour performed for the improvement of the property. Where

plans have been made but the property has remained untouched, the courts consider that the plans have not been for the improvement of the property. If the work is undertaken, however, even though it is not carried to completion, the technical requirements are complied with and the lien right will be recognized.

As I have had occasion to note, the lien laws in each state differ materially and no rules can be laid down which will cover all of the lien statutes. In every case, the owner will do well to post himself, or be sure that his architect is posted, with respect to the lien requirements of the state in which the work is done. In some states there is in effect what is sometimes known as a stop notice. This is a notice to the owner of the claim of the subcontractor or materialman. The effect of such a notice is to make the payment by the owner thereafter of additional sums to the contractor at the owner's peril, and to cause the owner to withhold any further payments to the contractor, until the amount due to the materialman or subcontractor has been properly adjusted. The statutes of the different states vary also with respect to the necessity for the filing or recording of the construction contract. In some instances, a lien based on the construction contract will not be allowed unless

the contract has been properly recorded. In other instances, the filing of the contract will be held to limit the liability of the owner and to bar any lien by subcontractors or materialmen. The owner's attorney can readily advise him as to the necessity of filing the contract in a given jurisdiction. The architect also will be advised on this point, ordinarily, and be able to advise his client as to the proper course to be pursued.

Claims and liens by employees of the general contractor will not prove troublesome or a special problem, if the operation is intelligently conducted by the architect and the work carried forward in such a way that proper assurance is had that, as the owner lives up to his obligations to the contractor, the latter in turn fulfills his obligations to his subcontractors and materialmen.

There is considerable divergence between the laws of the different states with respect to the nature of the lien of the subcontractor, and the protection which is afforded him by the various lien statutes. In some states, he is given a so-called direct lien on the property, without regard to the rights of the contractor. In other states he is given a so-called "lien by subrogation." Where this is the rule, before the subcontractor can secure a lien, it must appear that



the contractor himself is entitled to one and that there are sums due to the contractor, from the owner, to which the subcontractor may lay claim by reason of his services to the contractor.

In those states where the lien of the subcontractor is by subrogation, the subcontractor, if the general contractor fails to complete the contract, may be able to enforce his lien to the extent only of the sum due the contractor at the time that the lien claim is asserted. To attempt to state a general rule covering the rights of subcontractors or materialmen generally in the United States would be a practical impossibility. Any general statement would only be calculated to mislead the reader. The sole course which one can follow with safety and prudence is to investigate the lien statute and court decisions on lien legislation, in the state where the work is done, and to secure proper legal advice in this connection where necessary. If this course be followed, the owner will have accurate information as to the lien rights of the subcontractor and others and a knowledge of the circumstances under which, and the extent to which, liens can be properly filed and enforced by them.

Where the cost of the building is a substantial one, it is of real importance that the contract should provide that the contractor will submit

to the architect memoranda containing schedules giving the values of the component parts of the job. If the architect receives a statement from the contractor showing the division of the latter's charges as between foundation work, carpentry work, plumbing work, and the like, he will be able to tell whether the contractor has properly distributed these charges. If the contractor has included an undue proportion of his profit on the earlier items of the construction work, as for instance on the excavation and foundation work, it is important that this fact should be established. Otherwise, in the event of the insolvency of the contractor or of his inability, for any reason, to proceed with the job, the owner is likely to find that the contractor has received a substantial share of his profit on the earlier payments, made during the course of the work, and that the cost of completing the job is proportionately higher than it should be.

The question of fire and liability insurance during the progress of the work merits careful attention. Ordinarily, the contractor is required to maintain insurance sufficient to protect himself from any claims under workmen's compensation acts and from any other claims for personal injuries, death included, resulting from the work done under the contract. The owner

will do well to maintain contingent liability insurance in this same connection.

With respect to fire insurance, the owner must remember that the insurance should cover not only the building, as it is erected, but the materials on hand. These materials may belong to the contractor or to the owner, depending on the nature of the contract between them. In the ordinary case of a fixed price contract, they will be the property of the contractor, as he will be required to furnish all of the materials necessary to the proper completion of the work. In some cases, the owner is required to take out all of the insurance, covering both the property the title to which rests in him and also the property which belongs to the contractor. On the other hand, the owner may insure merely the building proper and leave it to the contractor to cover his own interests by insuring the materials on the site. The Standard Form of Contract of the American Institute of Architects adopts the first course and provides as follows:

*"Art. 21. Fire Insurance.—*The Owner shall effect and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent thereto and intended for use thereon, to at least eighty per cent. of the insurable value

thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

"All policies shall be open to inspection by the Contractor. If the owner fails to show them on request or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance, he may recover under Art. 39.

"If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being in accordance with Art. 45. If after loss no special agreement is made, replacement of injured work shall be ordered under Art. 24.

"The Trustee shall have power to adjust and settle any loss with the insurers unless one of the contractors interested shall object in writing within three working days of the occurrence of loss and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if



distribution by arbitration is required, direct such distribution."

Article 39, referred to in the above quotation, covers the rights of each party to the recovery of damages caused by the act of the other. Article 45 provides for the method of arbitration, and Article 24 outlines the basis on which payment is to be made for changes in the work and for additional work ordered by the owner.

In some respects, it may be better for an owner to keep distinct the insurance covering the materials and the insurance covering the building so far as the building itself is concerned. The owner should be responsible to the contractor for work actually installed and should, on the other hand, be entitled to treat entirely as his own insurance moneys paid for the destruction of the building by fire.

The material on hand is, of course, another matter. If the insurance covering this is to be taken out by the owner, it must obviously be held by him as trustee, in order that the rights of the contractor may be protected. I personally believe it to be advisable to keep this line of demarkation as clear as possible, so that the owner may be free to make any settlement of the insurance moneys which he deems proper, with

respect to the loss of the building as distinguished from the loss of the material. If the insurance covers both equally, and is held with respect to both equally by the owner as trustee for whom it may concern, he may be forced into an arbitration by an objection of the contractor to the settlement proposed to be made with the insurance companies. This arbitration may affect the insurance payable on the building as well as the insurance payable on the materials. As the contractor has no interest in the building itself, other possibly than the right which he would have to file a lien against the property in case of non-payment by the owner, he should not be in a position where he can prevent the owner making such settlement as, in his discretion, he desires to make of the insurance loss on the building.

It is, of course, quite in order that the contractor shall be in a position to prevent the owner, on the other hand, from adjusting the loss on the materials for a figure which the contractor deems improper and unfair to his interests.

The contractor should also agree to protect the owner against claims for damage caused to adjoining properties. This ordinarily results from careless excavation or plastering work, where

the property or structure of an adjoining owner is damaged as a result of the manner in which the work is carried on.

The payments to the contractor will be made upon the certificate of the architect and the inclusion in the contract of a provision to this effect is necessary, in order that the owner may have proper protection. If the payments are contingent upon the issuance of the architect's certificate, it will be incumbent upon the architect to certify to the work done as the job progresses and the owner will know that, in making payment of the amounts of the certificates, he is acting under the advice of the architect. A competent architect will not issue a certificate until he has satisfied himself that the amount for which it calls is justly due. The check which his investigation in this connection provides is an important safeguard.

Construction contracts differ in their provisions with respect to the liability of the contractor for defective work. Sometimes it is provided that his liability shall cease within a certain period after the owner has made the final payment and taken possession of the premises. Again, the provision may be more strict as against the contractor, or less so, depending upon the nature of the work, the custom of the archi-

tect, and the desires of the owner. Often the contract will include a clause that the contractor will make good any defective work for a period of one year after the completion of the job, or a clause that he shall not be called upon to make good any defects after one year from such time.

Where defects develop before the house is taken over and occupied by the owner and final settlement made with the contractor, the problem is a simple one. The owner, under these circumstances, has merely to retain in his hands sufficient funds to make good the defects, in the event that the contractor does not give them proper attention, when requested so to do.

A quite different situation is presented where the defects are not brought to the attention of the contractor until after the owner has settled with him in full. If the contract contains a clause whereby the contractor guarantees the soundness of the work or materials for a given period, following the completion of the job, the owner will be able to ask him to make good the defects on the basis of this undertaking. If the contractor is reasonable and conscientious, he will thereupon attend to them and make them good without charge. If he is of a type which is inclined to take advantage of the owner, if possible, the owner may have difficulties, owing



to the fact that he has no moneys belonging to the contractor remaining in his hands.

A far more difficult situation arises where the claim for the defects is not presented until the expiration of the guarantee period or, in the absence of any guarantee clause, until some time after the completion of the work. If the contract provides that the contractor shall not be liable after the expiration of a certain period, and the specified time has elapsed before the claim for the defects is presented, the contractor will be in a position to set up the agreement as a bar to a recovery by the owner. Whether he will do so or not will depend largely on his business policy and standing. Many contractors will, under these conditions, set up the defence as a matter of course. Others will not stand on this technical defence, but will investigate and, if they are satisfied that the defects are due to some fault on their part, will remedy them, without any regard to the technical right which they may have to refuse to do so.

There is an exception to the general rule which protects the contractor after the expiration of a specified or reasonable time. This exception has to do with what are known in the law as "latent" defects. These are defects which were not at first apparent but which have

been disclosed at a later time. If the defects complained of were such that the owner, with reasonable diligence, should have discovered them and he makes no claim within the period within which claims are to be presented, he will not be able to recover from the contractor or to compel the latter, if unwilling, to make good the work objected to. This is on the theory that the owner knew or should have known that the defects existed and should, accordingly, have been diligent to make his claim promptly and without fail. On the other hand, if the defects were hidden defects, and of such a character that the owner, with reasonable diligence, could not have discovered them, he may be able to compel the contractor to remedy them when they are discovered, notwithstanding the fact that the time limit has expired. Whether he can do this or not will depend upon the wording of the contract.

If the contract states specifically that no claims of any character for any defective work, latent or otherwise, shall be presented after a certain date, the owner will not be able to enforce any claims after that time. Upon the other hand, if the contract does not specifically cover latent defects, the courts in some jurisdictions will imply an agreement to the effect that the contract

covers only defects which were obvious and discoverable by ordinary diligence and that latent defects, which were the fault of the contractor, are not covered by the contract provisions.

This is in accordance with good sense. The work has been done by the contractor. If, in the course of that work, he has performed certain details improperly, but has, in proceeding with the work, so hidden them that they are not discernible until later developments bring them to light, he should be held responsible for the damage which results from them. I am not assuming in this connection any bad faith on the part of the contractor. If he knew of the defects and purposely hid them from the knowledge of the owner, his liability would obviously be clear. This action on his part would amount to bad faith or fraud and few if any courts would allow him, under such conditions, to plead as a defence the technical provisions of the contract with respect to the time limitation on the presentation of claims.

Latent defects are caused in the usual case, not by any conscious deception on the part of the contractor, but by the fact that, as the work progresses, they are so hidden that they are not apparent. For example, there may be a defect in

a floor beam, owing to improper material or workmanship. Neither the supervising architect nor the contractor may be aware of it at the time it is put in place. When the flooring is put down and the ceiling of the room below put in place, the defect will be hidden. Again, in the roofing work, one of the workmen employed by the contractor may use improper materials in the roof construction and then cover them over with tiling or other roofing material. When the floor gives way, or leaks develop, the defects will come to light and not before.

No general statement can be made, with entire accuracy, of those circumstances under which the contractor will be forced to make good the work on the ground of latent defects, and those under which the owner will not be able to compel him to do so. Too many elements are involved—the wording of the contract, the views adopted by the courts in the jurisdiction in which the case arises, the dealings of the parties, the nature of the defects and other material points. If the owner wishes to be on the safe side and to protect himself in this connection he will do well to insert, if possible, in the contract a provision to the effect that the contractor will remedy any latent defects when



called upon to do so, with the understanding, of course, that the owner will notify him promptly of them as soon as they are discovered.

Before the house is occupied the owner should, in company with his architect, make as careful an examination of the work in all its details as possible. After the final payment has been made and the house occupied, the owner should similarly keep a sharp lookout for defects, in order that he may detect all such if possible before the expiration of the guarantee period, if there be one under the contract. If all defects of importance can be brought to the attention of the contractor before the expiration of the guarantee period, the question of latent defects with its uncertainties and difficulties will not be presented and the owner will, in all probability, be saved considerable annoyance and expense.

The contractor must be bound, also, to observe all laws and municipal regulations.

It is quite usual to include in the building contract a provision that, if the work is not completed by a certain date, the contractor shall pay to the owner a certain sum for each day beyond that time that the work remains uncompleted. Where, as the lawyers say, "time is of the essence" of the contract, that is, where time is a

real element and consideration in the proceedings, the contract should so state and the clause providing for damages for delay should be very carefully phrased.

This clause is commonly known as the "liquidated damage" clause of the contract. Unless it is properly phrased, however, it is likely to be held void. The courts have made a clear distinction between liquidated damages and penalties. If the contract is worded in such a way that the court considers that it calls for a penalty instead of for liquidated damages, it will not be enforced. On the other hand, if the provision is held to be reasonable, and to be a mutual agreement by the parties of liquidated damages, representing the actual damage which they agree shall be considered as incurred in the event of delay, the clause will be considered valid and the owner will be in a position to enforce it, in the event of the default of the contractor.

It is very advantageous to have a liquidated damage clause in a contract, irrespective of whether it is enforced or not. Repeatedly these clauses are inserted but the owner takes no action to enforce them, believing that the contractor has done his best and that the delay is not due to any wilful default on his part. If the clause is in the contract, however, it puts in the hands of

the owner and of the architect a weapon which may be used with telling effect, in case of need, as in instances where a contractor shows a disposition not to carry out in good faith all of the terms of his agreement.

A threat to invoke and enforce the provisions of the liquidated damage clause will often result in securing prompt and effective action by a contractor, where all other efforts to secure this result have failed. If such a clause is inserted in the contract, the owner will do well to have the clause checked and approved by his attorney, so as to make sure that it is enforceable and legal and that it is not so worded that it will be construed to be a penalty.

A point in the construction contract which is of somewhat minor importance, but which may lead to considerable annoyance if not properly covered and attended to, is that dealing with the removal of all refuse and unused materials on the completion of the job. Where the contract makes no provision with respect to this a contractor will often shirk his responsibility, and will leave the site of the building operation in such condition that the owner will be forced to go to considerable expense to clean it up properly and to dispose of the refuse and general building litter, left behind by the contractor.

The same is true of cases where the contractor is called upon to grade the property. If the contract does not cover this point clearly, the contractor is likely to leave the grading in incomplete shape and to make it necessary for the owner to incur considerable additional expense, to place the grounds immediately about the house in proper condition.

The Standard Form of Contract has a well-worded clause as follows:

*"Art. 33. Cleaning Up.*—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work, and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Architect shall determine to be just."

It would be well, for the sake of caution, to add to this clause a few words making the obligation of the contractor to remove the waste material apply not only to material "from and about the building," but to material anywhere on the property.



The time to provide for the final "clean-up" by the contractor and for any grading work which he is called upon to do about the house is when the contract is entered into. It is not a matter which will cause the contractor any great concern at that time. If the contract be properly drawn, the owner will receive a house which, in itself and in its surroundings, is free from rubbish and all of the accumulation of waste materials which follows in the wake of any building operation. If his contract is not specific on this point, he in all likelihood will receive quite the opposite.

The owner will do well to bear in mind that matters which are not covered by the contract will constitute extras and that extra charges have an uncanny way of multiplying and increasing, at a rate quite disproportionate to the contract price. A contractor who finds that he has figured a job a bit too fine will be tempted to make a liberal charge for extras in the hope of thus recouping his losses. The more fully the contract can cover all details of the job in the first instance, the better it will be for the owner and the greater will be his saving. Before the contract is let, therefore, he should go over all of the details of the work with his architect with as much care as possible, to the end that

all points may be covered and included in the contract so far as may be practical.

If one is fortunate enough to be in a position to pay cash for the construction of his home the financing of the building operation will be a very simple matter. In the great majority of cases the home builder is not situated so happily, however, and must give thought to the best methods of financing the job. He will, of course, be in a position to pay a substantial part of the cost in cash, but will often wish to cover the balance by a mortgage or building loan or by some other plan.

Where one purchases a house already erected, rather than a vacant building lot, the simplest method of financing a portion of the purchase price is to make payment of it in the form of a purchase money mortgage. This, as we have seen, is simply a mortgage given by the purchaser to the seller at the time the title to the property is closed. A purchase money mortgage and the ordinary mortgage both differ from a building loan in that the payments to the borrower, under the latter plan, are made in instalments and periodically as the construction work progresses.

A form of mortgage which will require a higher annual payment at first, but which will

ultimately represent a considerable saving to the mortgagor, is that which is given under the building and loan association plan. Building and loan associations originated in England. Probably the first one organized in the United States was organized in Brooklyn, New York, in 1836.

The building and loan association is distinctly a mutual proposition. He who borrows from the association becomes a member of the association, and the purpose of the association is to create an available fund which may be loaned to the borrowing members. The members of a building and loan association become such by acquiring and holding the stock of the association. The members are entitled to receive the par value of their stock on its maturity, to make withdrawals, and to receive loans. Ordinarily, the stock is issued at the time of the subscription and is paid for by periodic instalment payments until such time as the amounts paid, together with the additions thereto in the shape of interest, fines, and the like, equal the face value of the stock. Ordinarily, also, a member of such an association can withdraw upon making payment to the association of his indebtedness to it. One who holds membership in a building and loan association has the right, by

virtue of his membership, to receive in most cases a loan up to the amount of the par value of his stock, upon giving proper security to the association.

While the laws governing building and loan associations differ materially in different states, the member will probably be called upon to pledge his stock as security and to give a mortgage on the real property for the same purpose. This mortgage is usually a first mortgage, although some of the statutes allow these associations to take second mortgages under certain conditions.

Building and loan associations enjoy many advantages and immunities by law. The profits from interest and the premiums on loans to members and the like are allowed to accumulate and, under the mutual plan pursuant to which they operate, are held for the ultimate benefit of the shareholders. The result of a mortgage under this plan is, therefore, that the home owner, by periodic payments, not only takes care of the interest due on his mortgage, but, through the amounts credited to him on account of principal as well as interest, cuts down gradually the principal of the mortgage until ultimately it is paid in full. Where, in the case of the ordinary mortgage, therefore, the mortgagor on the



maturity of the mortgage is called upon to pay the full amount thereof, under the building and loan plan, on the same date, he will have reduced materially the principal of the mortgage, and will be able to continue to carry it in a constantly reduced amount until it has been entirely liquidated.

If a building and loan mortgage is not taken, or a purchase money mortgage secured, the mortgage funds must be secured from some individual or institution. Usually, in every locality, there are a number of individuals who make it a practice to lend money on proper mortgage security. Whether this will be an advantageous arrangement for the home builder will depend very largely on the personality and character of the lender. If the latter is one whom the home builder knows well and who will naturally take a friendly interest in the proceedings, aside from the business aspects of them, the borrower will be in safe hands and will probably have no difficulties in arranging for a renewal of the mortgage in a reduced amount on maturity, if that should be necessary.

As a rule, the better plan, however, is to secure a mortgage from some corporation. An individual holder of the mortgage may die and the mortgage pass into unfriendly hands.

Also, and as a general proposition, it is usually easier and more satisfactory to have a business dealing of this character with a corporation whose business it is to engage in such transactions, rather than with a friend or acquaintance. In this way, friendship and business are not intermingled and the transaction is placed entirely upon a business basis.

There are many mortgage companies whose business it is to lend money on mortgage and to make their profits by the resale of these mortgages to their customers and, in many instances, by guaranteeing to their customers the payment of the mortgages, both as to interest and principal, but at a somewhat less rate of interest. For example, a corporation engaged in this business will take the mortgage from the home builder at 6 per cent., and will guarantee it to the one who purchases it at  $5\frac{1}{2}$  per cent., retaining the one half per cent. as its profit and compensation for the guarantee and for attending to the collection of the amounts due, the payment of the insurance and taxes and the like.

Trust companies have long had the power to make loans on real estate and, more recently, this same privilege has been extended to national banks. At the present time, most national banks conduct a trust department under a spe-

cial trust officer and make loans on bond and mortgage.

Which plan will prove the most advantageous in a given case will depend, of course, on all of the circumstances which characterize it. Usually, the building and loan mortgage will be found, in the long run, to be the most advantageous. It is especially helpful in the case of those whose means are rather limited. It enables them to take care of the amounts due by small periodic payments out of earnings and thus, in effect, to finance the operation on the instalment plan.

I have already pointed out in another connection that, if a mortgage be given, it is advisable to insert in it a provision that payments in reduction of the principal may be made on any interest date prior to maturity. This will enable the owner to apply any cash which he may have in hand from time to time to the reduction of the mortgage, without waiting until the latter matures. If this provision is not inserted in the mortgage originally the holder of the mortgage will often be unwilling to extend this privilege. He may be receiving a higher rate of interest under the mortgage than, under financial conditions as they then exist, he can otherwise secure.

## CHAPTER X

### CONCLUSION

**I**N our discussion of the problems of the home builder, it has of necessity been possible only to cover the essentials in somewhat general terms. Each one who purchases land or builds a home is confronted with his own peculiar problems and situation. The most that can here be done is to outline in a general way the problems which will confront the home seeker, the points which he should have in mind and the steps in general which he should take to protect his interests and his investments. Without attempting to include in a summary all of the points to which I have from time to time referred, it will be helpful to recapitulate briefly some of the essentials which must be considered and borne in mind.

In the first place, and before purchasing the land, the nature of the locality and its advantages, its public utility equipment, its schools, police and fire protection, the tax rate, the quality of its governing body, and its general



policy for sound and at the same time progressive management and development, should all receive adequate consideration.

As a rule, purchases of property in real estate developments on the instalment plan should be avoided. If made, they should at the least receive careful scrutiny and adequate preliminary investigation.

No contract of sale should be entered into until it has been passed upon by some competent attorney, and no title should be finally closed, until a proper search of the records has been made and proper advice received. The services of a competent title company can be secured at moderate expense, and a title policy is usually desirable. The better method is to employ an attorney and to let him make the arrangements with the title company.

The purchaser should never forget that the contract of sale, while a simple appearing document, may contain much dynamite and that it will control and determine the character of the title which he receives, and the character of the deed which is delivered to him; that he is entitled only to a deed which corresponds with the terms of the contract of sale; that the time to secure advice is not after the contract of sale has been signed, but before; that a very small

outlay for proper advice preliminarily may make all the difference between the receipt of a good title and the securing of a very limited or defective title.

So far as the financing of the operation is concerned, the purchaser and builder may bear in mind the considerations which we have discussed in the last chapter. If there is no house upon the property when it is purchased, and one is erected by the owner, he should give adequate consideration to the selection of his architect and to the contracts with the latter and with the contractor.

The architect selected should combine with his artistic and architectural ability a requisite amount of business judgment and understanding. In choosing him, the owner should have in mind the type of house desired and, before any sketches or plans are made, should come to just as definite a conclusion with respect to the type of the house and its requirements as possible. It is of the utmost importance that the architect should not be called upon to make repeated studies and preliminary sketches, and to make changes in the plans and specifications, after the work has been once laid out or undertaken. The more clearly and comprehensively the work is covered and decided upon before it

is undertaken, the greater will be the ultimate saving to the owner, both in time and in money.

In every building job so-called "extras" will usually be found. These result from changes in or additions to the work and should be kept at a minimum.

With respect to the contract with the contractor, the owner will do well to take the advice of his architect and of his attorney. In most cases he will do well, also, to avoid the cost-plus form of contract, and to enter into a fixed lump-sum contract following competitive bidding.

It is preferable to have one general contractor for all the work, so far as this may be practicable. The architect's charges will be less, ordinarily, where the work is let under one contract than where it is let under separate contracts. By letting the work to one general contractor, the responsibility for the work will be centralized and many complications avoided. Personally, I would recommend concentrating the authority under the contract in the architect, so far as possible, and avoiding too general and liberal provisions for arbitration.

Provision should be made for a proper bond guaranteeing the performance of the work by the contractor.

If the work is of real magnitude, a "clerk of the works," so-called, should be employed, who will act as a resident superintendent and will give active daily superintendence to the work, as distinguished from the ordinary supervisory services of the architect.

In general, the purchase and building of the home calls especially for proper preliminary consideration and planning before action is taken. The purchase and the building operation can both be carried through successfully and satisfactorily, if proper thought is given to the details and problems involved, before the home seeker commits himself by the signing of purchase contracts, the selection of architect and contractor and the like. Some of the problems involved are simple and some are rather technical. If full preliminary consideration is had—if all action taken is reasonably deliberate and guided by adequate advice on the points where this is necessary—the owner will find himself possessed of a property and of a home which will reasonably approximate the hopes which he has entertained, and which will prove adequate and satisfactory.

A final word of caution is in order with reference to the character of the construction adopted. There is no economy in cheap con-



struction. Whatever money is saved should be saved by omitting non-essentials and items which may be broadly classed as luxuries. It should not be saved at the expense of sound materials or of sound workmanship. There is an unfortunate and widespread tendency to-day to erect houses of poor material and to skimp in many fundamental details of construction. Houses so erected look well for a time, but for a short time only. Unless the foundation and framework are well done, the timbering sound and adequate, the masonry, roofing, plumbing, and lighting equipment, properly constructed and installed, the depreciation will be out of all proportion to what it should be. If these fundamentals are sound, the home will have a permanency and a substantial character which it will never have, if it is not structurally right to begin with. Its resale value will be infinitely greater and the cost of repairs infinitely less.

Sound construction also will obviate many disputes between client, contractor, and owner, which would otherwise arise. Where, by reason of defects in materials or workmanship, the house proves unsatisfactory, it is inevitable that the dissatisfied owner will blame the architect or the contractor or that the contractor will, rightly or wrongly, blame the architect. Disputes, law-

suits, and general misunderstandings will result. The cost of repairs or extra work to remedy defects will be high and greatly in excess of what it would have cost to do the work correctly in the first instance.

Cut out the nonessentials. They can be added later. Concentrate on simplicity of construction and of design. Do not sacrifice stability for features which can easily be acquired a year or five years hence. Remember that the idea is to build a *home*, not a temporary shelter or a speculative building. See to it that whatever work is done—simple or elaborate—is well done. Thus and thus only will you acquire a real home; a home that will be a joy and not a burden; a home that will measurably realize the ideal result for which you have striven.



## FORMS





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The Standard Forms of contract between owner and architect and owner and contractor and the general conditions of the contract are published by courtesy of the American Institute of Architects. The other forms, with the exception of the form for the bill of sale, and the re-

vocable license, are published by courtesy of the Title Guarantee & Trust Company of the City of New York.

The reader, in referring to the forms of the Title Company, must bear in mind that they are, many of them, in the statutory form provided by the laws of New York, and that they are adapted especially for use in the City of New York. The corresponding forms in other localities and states will differ in some particulars, but the essentials will in general remain substantially the same. By reference to the various forms, the reader will understand more clearly the references in the text which have to do with the acquiring of the title to the property and those which have to do with the relations between the owner and architect and the owner and the contractor.

## CONTRACT OF SALE

AGREEMENT made and dated between  
hereinafter described as the seller, and

hereinafter described as the purchaser,

WITNESSETH that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the

Said premises are sold subject to:

1. Building restrictions and regulations in resolution or ordinance adopted by the Board of Estimate and Apportionment of the City of New York, July 25th, 1916, and amendments and additions thereto now in force.
2. Encroachments of stoops, areas or cellar steps, if any, upon street or highway.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the centre line thereof, and all right, title, and interest of seller in and to any award made or to be made in lieu thereof, and in any award for damage to said premises by reason of change of grade of any street; and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

If at the time of the delivery of the deed the premises



or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller upon the delivery of the deed.

The following are to be apportioned:

1. Rents and interest on mortgages.
2. Rents on gas ranges.
3. Insurance premiums on existing policies.
4. Taxes and water rates for the calendar year.

If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to the time herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, Building Department, Labor Department, Health Department, or other State or Municipal Department having jurisdiction, against or affecting the premises of the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser, the fee simple of the said premises, free of all encumbrances except as herein stated.

All sums paid on account of this contract, and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

The deed shall be delivered upon the receipt of said payments at the office of

at                      o'clock on

19

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

The seller agrees that

brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties.

IN PRESENCE OF

[L. S.]

[L. S.]

[L. S.]

## ACQUIRING A HOME

## WARRANTY DEED

WITH FULL COVENANTS

**THIS INDENTURE**, made the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, nineteen hundred and \_\_\_\_\_

BETWEEN

and \_\_\_\_\_, party of the first part,

, party of the second part:

WITNESSETH, that the party of the first part, in consideration of

dollars lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part,

and assigns forever,

ALL

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part,

and assigns forever.

AND said

covenants as follows:

FIRST: That said

is seized of the said premises in fee simple, and has good right to convey the same;

SECOND. That the party of the second part shall quietly enjoy the said premises;

THIRD. That the said premises are free from incumbrances;

FOURTH. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

FIFTH. That said

will forever warrant the title to said premises.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

IN PRESENCE OF

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      , nineteen  
hundred and                      , before me came

to me known to be the individual described in, and who  
executed the foregoing instrument, and acknowledged that  
executed the same.



STATE OF  
COUNTY OF

} ss.:

On the                      day of                      , nineteen  
hundred and                      , before me came

                    , the subscribing witness to the  
foregoing instrument, with whom I am personally ac-  
quainted, who, being by me duly sworn, did depose and  
say that he resides in

                    ; that he  
knows

                    to be the individual described in, and  
who executed, the foregoing instrument; that he                      , said  
subscribing witness, was present and saw  
execute the same; and that he                      , said witness, at the same  
time subscribed h                      name as witness thereto.

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      , nineteen  
hundred and                      , before me came

to me known to be the individual described in, and who  
executed, the foregoing instrument, and acknowledged that  
executed the same.

✻   ✻   ✻   ✻

## BARGAIN AND SALE DEED

THIS INDENTURE, made the                      day of  
                    , nineteen hundred and

BETWEEN

and , party of the first part,

WITNESSETH, that the party of the first part, in consideration of , party of the second part:

dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part,

and assigns forever,  
ALL

together with the appurtenances and all the estate and rights of the party of the first part in and to said premises, TO HAVE AND TO HOLD the above granted premises unto the party of the second part,

and assigns forever,

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

IN PRESENCE OF:



On the \_\_\_\_\_ day of \_\_\_\_\_, nineteen  
hundred and \_\_\_\_\_, before me came

to me known to be the individual described in, and who  
executed, the foregoing instrument, and acknowledged that  
executed the same.

\* \* \* \*

### QUITCLAIM DEED

THIS INDENTURE, made the \_\_\_\_\_ day of  
\_\_\_\_\_, nineteen hundred and \_\_\_\_\_

BETWEEN

\_\_\_\_\_, party of the first part,  
and

\_\_\_\_\_, party of the second part:  
WITNESSETH, that the party of the first part, in considera-  
tion of

dollars, lawful money of the United States, paid by the  
party of the second part, does hereby remise, release and  
quitclaim unto the party of the second part,  
and assigns forever,

ALL

together with the appurtenances and all the estate and  
rights of the party of the first part in and to said premises,



TO HAVE AND TO HOLD the premises herein granted  
unto the party of the second part,  
and assigns forever,

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

IN PRESENCE OF:

STATE OF  
COUNTY OF

} ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, nineteen  
hundred and \_\_\_\_\_, before me came

to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that executed the same.

STATE OF  
COUNTY OF

$\left. \begin{array}{l} \text{ } \\ \text{ } \\ \text{ } \end{array} \right\} ss.:$

On the \_\_\_\_\_ day of \_\_\_\_\_, nineteen  
hundred and \_\_\_\_\_, before me came

\_\_\_\_\_, the subscribing witness to the foregoing instrument, with whom I am personally ac-

quainted, who, being by me duly sworn, did depose and say  
that he resides in

; that he

knows

to be the individual described in,  
and who executed, the foregoing instrument; that he ,  
said subscribing witness, was present and saw  
executed the same; and that he , said witness, at the same  
time subscribed h name as witness thereto.

STATE OF  
COUNTY OF

} ss.:

On the day of , nineteen  
hundred and , before me came  
to me known to be the individual described in, and who  
executed, the foregoing instrument, and acknowledged that  
executed the same.

\* \* \* \*

### EXECUTORS' DEED

THIS INDENTURE, made the day of  
, nineteen hundred and  
, between

as executor of the last will and testament  
of , late of  
, deceased, party of the first part, and

, party of the second part:  
WITNESSETH, that the party of the first part, by virtue of the power and authority to him given in and by said last will and testament, and in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part,  
his heirs and assigns forever, ALL

together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part,  
and assigns forever.

AND the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

IN PRESENCE OF:

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      , nineteen  
hundred and                      , before me came

to me known to be the individual described in, and who  
executed, the foregoing instrument, and acknowledged that  
executed the same.

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      , nineteen  
hundred and                      , before me came

to me known, who, being by me duly sworn, did depose and  
say that he resides in

; that he is the

of

the corporation described in, and which executed, the fore-  
going instrument; that he knows that the seal of said cor-  
poration; that the seal affixed to said instrument is such  
corporate seal; that it was so affixed by order of the board  
of                      of said corporation; and  
that he signed h                      name thereto by like order.



## BILL OF SALE OF PERSONAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS, that I the undersigned  
of

Street, City of  
County of and State of  
party of the first part, for and in consideration of One  
dollar (\$1.) and other good and valuable considerations, to  
me paid by of  
party of the second part, receipt whereof is hereby acknowl-  
edged, have bargained, sold, granted and conveyed and do  
hereby bargain, sell, grant and convey unto the said party  
of the second part, his executors, administrators and as-  
signs all of the following described property now in or on  
the premises known as No. Street,  
City of , State of  
which said premises have been this day conveyed by me  
to the party of the second part by deed bearing even date  
herewith, viz:

(insert description of property conveyed)

TO HAVE AND TO HOLD the above described property  
unto the said party of the second part, his executors, ad-  
ministrators and assigns forever.

AND I, the said undersigned, for myself, my heirs,  
executors and administrators, hereby covenant and agree  
to and with the said party of the second part that I will  
forever warrant and defend the sale of the above described  
property and the title thereto unto the said party of the  
second part, his executors, administrators and assigns against  
all and every person and persons whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my seal this                      day of                      , 192 .  
L. S.

STATE OF NEW YORK,                      }  
COUNTY OF NEW YORK,                      } ss.

On this                      day of                      , 192 ,  
before me personally came and appeared  
to me known and known to me to be one of the individuals  
described in and the individual who executed the foregoing  
instrument, and he duly acknowledged to me that he ex-  
ecuted the same for the uses and purposes therein expressed.

✱   ✱   ✱   ✱

## BOND

KNOW ALL MEN BY THESE PRES-  
ENTS, that

hereinafter designated as the obligor , do hereby acknowl-  
edge                      to be  
indebted to

hereinafter designated as the obligee, in the sum of

dollars, lawful money of the United States, which sum  
said obligor do hereby  
covenant to pay to said obligee,  
or assigns, on

the \_\_\_\_\_ day of \_\_\_\_\_ nineteen  
 hundred and \_\_\_\_\_, with interest thereon,  
 to be computed from the \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19\_\_\_\_, at the rate of \_\_\_\_\_ per  
 centum, per annum and to be paid on the \_\_\_\_\_ day of \_\_\_\_\_  
 next ensuing the date hereof,  
 and semi-annually thereafter.

AND IT IS HEREBY EXPRESSLY AGREED THAT the whole  
 of the said principal sum shall become due at the option  
 of said obligee after default in the payment of interest for  
 thirty days, or after default in the payment of any tax or  
 assessment for thirty days after notice and demand. All of  
 the covenants and agreements made by the said obligor  
 \_\_\_\_\_ in the mortgage covering premises therein  
 described and collateral hereto, are hereby made part of  
 this instrument.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 IN THE PRESENCE OF

STATE OF NEW YORK, }  
 CITY OF NEW YORK, } ss.:  
 COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_\_ day of \_\_\_\_\_, nineteen  
 hundred and \_\_\_\_\_, before me came

to me known to be the individual \_\_\_\_\_ described in, and who  
 executed, the foregoing instrument, and acknowledged that  
 he \_\_\_\_\_ executed the same.

## MORTGAGE

THIS MORTGAGE, made the \_\_\_\_\_ day of  
nineteen hundred and \_\_\_\_\_, between

\_\_\_\_\_, the mortgagor,  
and

\_\_\_\_\_, the mortgagee.

WITNESSETH, that to secure the payment of an in-  
debtedness in the sum of

\_\_\_\_\_ dollars.

lawful money of the United States to be paid

with interest thereon

\_\_\_\_\_ according to a certain bond  
or obligation bearing even date herewith, the mortgagor  
hereby mortgages to the mortgagee

TOGETHER with all fixtures and articles of personal  
property, now or hereafter attached to, or used in con-  
nection with, the premises, all of which are covered by this  
mortgage.

And the mortgagor covenants with the mortgagee as  
follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.

3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for thirty days, or after default in the payment of any tax, water rate or assessment for thirty days after notice and demand.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

10. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

11. That the whole of the principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand in the payment of any instalment of any assessment for local improvement heretofore or hereafter laid which is or may become payable in annual instalments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding



that such instalments be not due and payable at the time of such notice and demand; and also that the whole of said principal sum shall become due at the option of the mortgagee, upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.

12. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' notice to the owner of the land requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

13. That the holder of this mortgage, in any action to foreclose it, shall be entitled, (without notice and without regard to the adequacy of any security for the debt), to the appointment of a receiver of the rents and profits of said premises; and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

14. If any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby) to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon

at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage and by the bond which it secures. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      19    , before me came

to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF  
COUNTY OF

} ss.:

On the                      day of                      19    , before me came

to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that executed the same.

## TITLE CERTIFICATE

TITLE No..... Reissue of No.....

TITLE GUARANTEE AND TRUST COMPANY certifies that the title to the premises described on the page hereto annexed or shown on the diagram endorsed hereon, has been examined and approved by it, and that a good and marketable title thereto in fee, clear of all encumbrances and defects, except as noted below, is vested in and can be conveyed

by  
mortgaged

If this certificate is delivered to the applicant, it is accepted upon the understanding that neither the applicant, nor the party who is to be insured has any information of any defects, objections, liens or encumbrances affecting said premises, except those shown below; and the applicant agrees, by the acceptance of this certificate, that the Company is entitled to immediate payment of its fees, and that the Company's liability in any event under this certificate is limited to the issuance of a policy of title insurance in its usual form for the amount hereinafter stated.

1. RETURNS ON TAX SEARCH HERETO ANNEXED.
2. SURVEY VARIATIONS. The policy will contain survey exceptions indicated on "Survey Exception" page hereto annexed.
3. RESTRICTIVE COVENANTS, EASEMENTS, AND AGREEMENTS.
4. MORTGAGES.

When a mortgage appears overdue, inquiry should be made at closing as to a possible unrecorded modification.

A. Mortgagor,

Mortgagee,

Address:

Amount, \$

Dated,

Recorded,

L

Sec.

Mp.

Mtg. Tax (Law 1905), \$

, paid to

1906.

Recording Tax (Law 1906), \$

paid.

Due,

Interest

% Int. days

and

Principal and interest payable in

Letter

{ to pay off

{ sent on

19

{ for information

to

Address

Mtgee. Statem't shows int. paid to

Privileges,

Clauses:

,

Days Int.

Tax, Ass't,

Non-insurable

Receivers

Ass't Rents

Sp. Tax

Notice by Mail

Warranty

Estoppel

Insurance

Demolition

Litigation:

Assigned to

Assignment dated

Recorded,

L

Sec.

Mp.

Assigned to

Assignment dated

Recorded,

L

Sec.

Mp.

To be filled { The above Mtg. is now held by  
 in by closer. { Rate of interest is now % Int. is paid to

(NOTE:—Clauses in mortgage are checked.)

Assigned to

Assignment dated

Recorded,                      L                      Sec.                      Mp.

Assigned to

Assignment dated

Recorded,                      L                      Sec.                      Mp.

Address

and principal due on

19

B. Mortgagor,

Mortgagee,

Address:

Amount, \$

Dated,

Recorded,                      L                      Sec.                      Mp.

Mtg. Tax (Law 1905), \$                      , paid to                      1906.

Recording Tax (Law 1906), \$                      paid.

Due,

Interest                      % Int. days                      and

Principal and interest payable in

Letter                      { to pay off                      } sent on                      19  
    { for information                      } to                      Address

(NOTE:—Clauses in mortgages are checked.)



Mtgee. Statem't shows int. paid to

Privileges,

Clauses:	,	Days Int.	Tax, Ass't,	
Non-Insurable		Receivers	Ass't Rents	Sp. Tax
Notice by Mail		Warranty	Estoppel	
Insurance		Demolition	Litigation:	
Any subordination clause?				

---

Assigned to

Assignment dated

Recorded,	L	Sec.	Mp.
-----------	---	------	-----

Assigned to

Assignment dated

Recorded,	L	Sec.	Mp.
-----------	---	------	-----

To be filled { The above Mtg. is now held by  
in by closer. { Rate of interest is now %. Int. is paid to

Assigned to

Assignment dated

Recorded,	L	Sec.	Mp.
Assigned to			

Assignment dated

Recorded,	L	Sec.	Mp.
-----------	---	------	-----

Address  
and principal due on

5. LEASES OF RECORD AND FACTS AS TO POSSESSION. The Policy will not insure the character or length of term of hirings of the premises, or any part thereof, under lettings not of record.
6. REPORT ON STREETS.
7. JUDGMENTS, ENCUMBRANCES OR DEFECTS NOT ABOVE NOTED.
8. BUILDING REGULATIONS, in resolution or ordinance adopted July 25, 1916, by Board of Estimate and Apportionment and amendments thereto.
9. BUILDING DEPT. SEARCH  
TENEMENT " "  
FIRE " "

THIS COMPANY ASSUMES NO RESPONSIBILITY FOR THE ABOVE DEPARTMENT SEARCHES, AND DOES NOT GUARANTEE THAT THERE ARE NO OTHER VIOLATIONS THAN THE ONES RETURNED.

Where the Company is asked to insure the title for a SIX PER CENT. MORTGAGE, OR A MORTGAGE OTHER THAN A FIRST MORTGAGE, the policy will contain the following exception: "Claims, if any be made, that by reason of acts of the insured, or of agents of the insured, the lien of the mortgage mentioned in Schedule 'A' may be impaired or defeated, and all defences to the mortgage debt founded upon such claims."

When the title is properly closed in accordance with the instructions given below, the papers are duly executed by the proper parties and duly recorded, and notice thereof given to the Company, this certificate must be returned to the Company with a complete report of the closing, as called for below accompanied by the receipts and proofs required, and thereupon, in accordance with the application, a policy

of title insurance, for \$ \_\_\_\_\_ in the usual form employed by the Company, excepting all estates, liens, encumbrances and defects shown in this certificate and not properly disposed of, will be issued upon payment of the Company's charges. This certificate shall become null and void upon the delivery of said policy.

**TITLE GUARANTEE AND TRUST COMPANY.**

Dated \_\_\_\_\_

19 .

by \_\_\_\_\_

ASS'T SOLICITOR.

.....Reader

\* \* \* \*

## POLICY OF TITLE INSURANCE

The TITLE GUARANTEE AND TRUST COMPANY, in consideration of the payment of its charges for the examination of title and its premium for insurance insures heirs and devisees, against all loss or damage, not exceeding dollars which the insured shall sustain by reason of any defect or defects of title affecting the premises described in Schedule A, hereto annexed, or affecting the interest of the insured therein, as described in said schedule, or by reason of unmarketability of the title of the insured to or in said premises, or by reason of liens or incumbrances charging the same at the date of this policy; saving all loss and damage by reason of the estates, intêrests, defects, objections, liens and incumbrances excepted in Schedule B, or by the conditions of this policy, hereto annexed and hereby incorporated into this contract, the loss and the amount to be ascertained in the manner provided in said conditions and to be payable upon compliance by the insured with the stipulations of said conditions, and not otherwise. It is expressly understood and agreed that any loss under this policy

may be applied by this Company to the payment of any mortgage mentioned in Schedule B, the title under which is insured by this Company, or which may be held by this Company, and the amount so paid shall also be deemed a payment to the insured under this policy. The aggregate liability of this Company under this policy and any policy issued to the holder of any such mortgage, shall not exceed the amount of this policy.

In Witness Whereof, the TITLE GUARANTEE AND TRUST COMPANY has caused its corporate seal to be hereunto affixed and these presents to be signed by two of its officers this

VICE-PRESIDENT.  
SECRETARY.

#### SCHEDULE A.

1. The estate or interest of the insured in the premises described below, covered by this policy.

2. The deed or other means by which the estate or interest covered by this policy is vested in the insured.

3. The premises in which the insured has the estate or interest covered by this policy.

#### SCHEDULE B.

This policy does not insure against such estates, interests, defects, objections to title, liens charges and in-

cumbrances affecting said premises, or the estate or interest insured, as are set forth below in this Schedule.

Standard Form Approved by the  
New York Board of Title Underwriters.

### CONDITIONS OF THIS POLICY

1. THE TITLE GUARANTEE & TRUST COMPANY will, at its own cost, defend the insured in all actions or proceedings founded on a claim of title or incumbrance prior in date to this policy and thereby insured against. This Company shall have the right, at its own cost, to maintain or defend any action relating to the title hereby insured, or upon or under any covenant relating to such title.

2. No claim for damages shall arise under this policy except under section 1 of these conditions, and except also in the following cases; (I) Where there has been a final determination in a court of competent jurisdiction, under which the insured may be dispossessed or evicted from the premises covered by this policy or from some part or undivided share or interest therein. (II) Where there has been a final determination adverse to the title, as insured, in such a court upon a lien or incumbrance not excepted in this policy. (III) Where the insured shall have contracted in good faith in writing to sell the insured estate or interest, and the title has been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this company within ten days thereafter. For thirty days after receiving such notice this company shall have the option of paying the loss, of which the insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the insured some proper



action or proceeding, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case a final determination is made in such action or proceeding, sustaining the objection to the title, shall this company be liable on this policy. (IV) Where the insurance upon the interest of a mortgagee, and the mortgage has been adjudged, by a final determination in a court of competent jurisdiction, to be invalid, or ineffectual to charge the premises described in this policy, or subject to a prior lien or incumbrance not excepted in this policy. (V) Where a purchaser at a sale under the judgment or order of a court of competent jurisdiction has been relieved by the court from a purchase of the insured estate or interest by reason of the existence of some lien, incumbrance or defect of title not excepted in this policy. (VI) Where the insured shall have negotiated a loan on the security of a mortgage on an estate or interest in land insured by this policy, and the title shall have been rejected by the proposed lender, this company, if there is no dispute as to the facts, will consent to the submission of the question of the validity of the title, as insured, to the Appellate Division of the Supreme Court in the Judicial District in which is situated the property affected by this policy, if said property be in the State of New York, and, if said property be elsewhere, then to some court of competent jurisdiction, and upon the judgment of such court shall then depend the liability of this company, but in no event shall this company be obligated to make any loan in place of the one so rejected. (VII) Where the insured shall have transferred the title insured by an instrument containing covenants in regard to title or warranty thereof, and there has been a final judgment rendered in a court of competent jurisdiction against the insured, or the heirs, executors, administrators or successors of the insured on any of such covenants or warranty, and because of

some defect of title or incumbrance not excepted in this policy.

3. Whenever the holder of a policy of this company, provided the estate or interest insured thereby is a fee or leasehold, shall within seven years from the date of that policy, sell or mortgage any or all of the real estate therein described, and shall within thirty days thereafter apply for a new policy on the same title, to be issued to the grantee or mortgagee, then if the risk be again accepted by this company, the former policy shall be surrendered and cancelled and the new policy will be issued upon payment of the then scheduled reissue rate therefor.

4. No transfer of this policy shall be made, except that a policy held by the owner of a mortgage or other incumbrance may be transferred to the purchaser at a foreclosure sale where the property sold is bought in by or for the insured, and except also in such other cases as this company may, by special written agreement, permit; but no transfer of this policy shall be valid unless the approval of this company is indorsed hereon by its proper officer. Such approval may in any case be refused at the option of this company, and all interests in this policy (saving for damages accrued) shall cease by its transfer without such approval, so indorsed. The liability of this company to any collateral holder of a policy shall in no case exceed the amount of the pecuniary interest of such collateral holder in the premises described in the policy.

5. Any untrue statement made by the insured, or the agent of the insured, with respect to any material fact; any suppression of or failure to disclose any material fact; any untrue answer, by the insured, or the agent of the insured, to material inquiries before the issuing of this policy, shall avoid this policy. But an assignee for value of this policy with the consent of this company indorsed on this policy shall not be affected by such untrue statements or answers,

or by such suppressions or breach of warranty in the application of which the assignee was ignorant at the time the assent to the transfer to that assignee was indorsed by this company.

6. In case any action or proceeding described in section 1 of these conditions, is begun, or in case of the service of any paper or pleading, the object or effect of which shall or may be to impugn, attack or call in question the validity of the title hereby insured, as insured, or to raise any material question relating to a claim of incumbrance hereby insured against, or to cause any loss or damage for which this company shall or may be liable under or by virtue of any of the terms or conditions of this policy, or in case any action or proceeding is begun that may have such object or effect, it shall be the duty of the insured at once to notify this company in writing. In such cases and in all cases where this policy requires or permits this company to prosecute or defend, it shall be the duty of the insured to secure to it the right and opportunity to maintain or defend the action or proceeding, and all appeals from any determination therein, and to give it all reasonable aid therein, and to permit it to use at its option the name of the insured. If such notice shall not be given to this company within ten days after the service of the first summons or other process in such action or proceeding, or after the service of such paper or pleading, then this policy shall be void. Provided, however, that an assignee for value of this policy, with the consent of this company, thereon indorsed, shall not be affected by any such failure to notify, if such assignee, through ignorance of the fact of such service having been made, shall have been unable to give or cause to be given the notice required by these conditions; and provided, also, that no failure to give such notice shall affect this company's liability, if such failure has not prejudiced and cannot in the future prejudice this company. This company will pay, in

addition to the loss, all costs imposed on the insured in litigation carried on by it for the insured under the requirements of this policy; but it will in no case be liable for the fees of any counsel or attorney employed by the insured; and the costs and loss paid shall not together exceed the amount of this policy.

7. In every case where the liability of this company has been definitely fixed in accordance with these conditions, the loss or damage shall be payable within thirty days thereafter. Provided, however, that in every case this company may demand a valuation of the insured estate or interest, to be made by three arbitrators or any two of them, one to be chosen by the insured and one by this company, and the two thus chosen selecting an umpire; and then no right of action shall accrue until thirty days after such valuation shall have been served upon this company, and the insured shall have tendered a conveyance or transfer of the insured estate or interest to a purchaser to be named by this company, at such valuation, less the amount of any incumbrance on said insured estate or interest not hereby insured against, and this company shall have failed within that time, said tender being during that time kept good, to find a purchaser for the estate or interest upon such terms. And provided, also, that this company shall always have the right to appeal from any adverse determination; but no appeal shall operate to delay the payment of the loss, if the insured shall give to this company satisfactory security for the repayment to this company of the amount of such loss in case there shall be, ultimately, a determination in favor of this company. And provided, further, that in every case, this company shall have the option of settling the claim or paying this policy in full; and the payment or tender of payment to the full amount of this policy shall determine all liability of this company under it. All payments under this policy shall reduce the amount of the



insurance *pro tanto*. No payment or settlement can be demanded without producing this policy for indorsement of the fact of such payment or settlement. If this policy be lost, indemnity must be furnished to the satisfaction of this company.

8. Whenever this company shall have settled a claim under this policy it shall be entitled to all the rights and remedies which the insured would have had against any other person or property in respect to such claim had this policy not been made, and the insured will transfer or cause to be transferred to this company such rights, and permit it to use the name of the insured for the recovery or defense thereof. If the payment does not cover the loss of the insured, this company shall be subrogated to such rights, in the proportion which said payment bears to the amount of said loss not covered by said payment. And the insured warrants that such right of subrogation shall vest in this company unaffected by any act of the insured.

9. Nothing contained in this policy shall be construed as a guarantee against the consequences of the exercise, and enforcement or attempted enforcement of governmental "police power" over the property described herein.

10. No title or rights of the assured in any premises beyond the lines of the premises as described in Schedule (A) or in any streets, roads, avenues, lanes or ways on which the said premises abut, except the ordinary rights of light, air and access belonging to abutting owners are insured by this policy unless such rights are specifically expressed as being insured, nor does this policy insure that the buildings or other erections upon the premises comply with State and Municipal laws, regulations and ordinances.

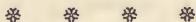
11. This policy does not insure the title to any personal property, whether the same be attached to or used in connection with said premises or otherwise.



If the premises described in Schedule A are subsequently improved or altered and the cost thereof exceeds 20 per centum of the amount insured hereunder, such proportion only of any loss established shall be borne by the Company as 120 per centum of the amount of this policy bears to the total value of the property as improved.

If the premises described in Schedule A are divisible into separate, independent parcels and a loss is established affecting one or more of said parcels the loss shall be computed and settled on a pro rata basis as if this policy was divided pro rata as to value of said separate independent parcels, exclusive of improvements made subsequent to the date of the policy.

13. Defects and incumbrances arising after the date of this policy or created, suffered, assumed or agreed to by the insured, and taxes and assessments which have not become a lien up to the date of this policy or which are payable in future instalments, are not to be deemed covered by it; and no approval of any transfer of this policy shall be deemed to make it cover any such defect, incumbrance, taxes or assessments. The term "the insured" wherever it is used in this policy includes all described on its first page as those whom it insures; and the term "this company" wherever it is used in this policy means the TITLE GUARANTEE & TRUST COMPANY.



# REVOCABLE LICENSE FOR ERECTION AND MAINTENANCE OF ELECTRIC ELECTRIC LIGHT POLES

AGREEMENT, made January , 1925, between  
residing at

\_\_\_\_\_, (herein referred to as the  
 "Owner") and \_\_\_\_\_ a New  
 York corporation, having offices at  
 \_\_\_\_\_, City of \_\_\_\_\_ (herein refer-  
 red to as the "Company") :

WHEREAS the Company desires to erect three electric  
 light poles on the property of the Owner, known as

No. \_\_\_\_\_ Street, City of \_\_\_\_\_  
 \_\_\_\_\_, and the Owner is willing to grant  
 the Company a license to do so, upon the terms hereinafter  
 stated ;

NOW, THEREFORE, in consideration of the premises and  
 of One dollar (\$1.), paid by each of the parties to the  
 other, receipt of which is severally acknowledged, the parties  
 hereby agree as follows:

1. The Owner hereby grants to the Company, sub-  
 ject to the other provisions hereof, a license to erect upon  
 his said property electric light poles at the points designated  
 on the sketch hereto attached, which poles shall be of the  
 following character :

(Take in brief description of poles, as for instance,  
 "octagonal in shape and properly painted so as to  
 harmonize with their surroundings")  
 and the right, during the period that said poles shall remain  
 on said property, to come upon the said property at reason-  
 able times for purposes of repairing and maintaining the  
 said poles and the wires supported thereby.

2. It is understood and agreed that neither the license  
 hereby granted, nor the erection or maintenance of said poles  
 shall create any permanent right by prescription or other-

wise in the Company or others, to maintain the said poles on the Owner's property, and that the Owner may at any time on ten days' notice to the Company, cancel the said license hereby granted, and that the said Company, in the event that the Owner shall give notice of such cancellation, shall thereupon remove all of said poles as to which the license shall be so terminated from the Owner's property within ten days thereafter.

3. All of the expenses incident to the erection and maintenance and removal of said poles shall be borne by the Company, and the Company will hold the Owner harmless from any claims or damages of any character resulting from or incident to the erection and maintenance thereof.

4. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company and the heirs, executors and administrators of the Owner.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement the day and year first above written.

L. S.

Attest

Secretary.

By

President.

STATE OF  
COUNTY OF

} ss.:

On this

day of

. 1925, before me

personally came and appeared , to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

STATE OF  
COUNTY OF

} ss.:

On this                      day of                      , 1925, before me

personally came                      , to me known, who  
being by me duly sworn, did depose and say: that he is the  
President of                      , the corporation de-  
scribed in and which executed the foregoing instrument;  
that he knows the seal of said corporation; that the seal  
affixed to said instrument is such corporate seal; that it was  
so affixed by order of the Board of Directors of said cor-  
poration and that he signed his name thereto by like order.

✻   ✻   ✻   ✻

## THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT

Issued by the American Institute of Architects for Use when a  
Percentage of the Cost of the Work Forms the Basis of Payment.

Second Edition—Copyright 1917 by the American Institute of  
Architects, Washington, D. C.

THIS AGREEMENT made the                      day of  
   in the year Nineteen Hundred and  
by and between

hereinafter called the Owner, and

   hereinafter called the Architect,  
WITNESSETH, that whereas the Owner intends to erect

NOW THEREFORE, the Owner and the Architect, for  
the considerations hereinafter named, agree as follows:

The Architect agrees to perform, for the above-named

work, professional services as stated in Article I of the "Conditions of Agreement between Owner and Architect," hereinafter set forth.

The Owner agrees to pay the Architect at the rate of \_\_\_\_\_ per cent., hereinafter called the basic rate, computed and payable as stated in the said "Conditions," and to make any other payments and reimbursements arising out of the said "Conditions."

The parties hereto further agree to the following:

#### CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

**ARTICLE I. THE ARCHITECT'S SERVICES.**—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

**2. THE ARCHITECT'S FEE.**—The fee payable by the Owner to the Architect for the performance of the above services is the percentage hereinbefore defined as the basic rate, computed upon the cost of the work in respect of which such services have been performed, subject, however, to any modifications growing out of these Conditions of Agreement.

**3. REIMBURSEMENTS.**—The Owner is to reimburse the Architect the costs of transportation and living incurred by him and his assistants while travelling in discharge of duties connected with the work, and the costs of the services of heating, ventilating, mechanical, and electrical engineers.



4. **SEPARATE CONTRACTS.**—The basic rate as hereinbefore defined is to be used when all of the work is let under one contract. Should the Owner determine to have certain portions of the work executed under separate contracts, as the Architect's burden of service, expense, and responsibility is thereby increased, the rate in connection with such portions of the work shall be four per cent. greater than the basic rate. Should the Owner determine to have substantially the entire work executed under separate contracts, then such higher rate shall apply to the entire work. In any event, however, the basic rate shall, without increase, apply to contracts for any portions of the work on which the Owner reimburses the Engineer's fees to the Architect, and to the cost of articles not designed by the Architect but purchased under his direction.

5. **EXTRA SERVICES AND SPECIAL CASES.**—If after a definite scheme has been approved, the Owner makes a decision which, for its proper execution, involves extra services and expense for changes in or additions to the drawings, specifications or other documents; or if a contract be let by cost of labour and material plus a percentage or fixed sum; or if the Architect is put to labour or expense by delays caused by the Owner or a contractor, or by the delinquency or insolvency of either, or as a result of damage by fire he shall be equitably paid for such extra service and expense.

Should the execution of any work designed or specified by the Architect, or any part of such work be abandoned or suspended, the Architect is to be paid in accordance with or in proportion to the terms of Article 6 for the service rendered on account of it up to the time of such abandonment or suspension.

6. **PAYMENTS.**—Whether the work be executed or whether its execution be suspended or abandoned in part or whole, payments to the Architect on his fee are, sub-

ject to the provisions of Article 5, to be made as follows:

Upon completion of the preliminary studies, a sum equal to 20% of the basic rate computed upon a reasonable estimated cost.

Upon completion of specifications and general working drawings (exclusive of details) a sum sufficient to increase payments on the fee to 60% of the rate or rates of commission arising from this agreement, computed upon a reasonable cost estimated on such completed specifications and drawings, or if bids have been received, then computed upon the lowest bona fide bid or bids.

From time to time during the execution of work and in proportion to the amount of service rendered by the Architect, payments shall be made until the aggregate of all payments made on account of the fee under this Article, but not including any covered by the provisions of Article 5, shall be a sum equal to the rate or rates of commission arising from this agreement, computed upon the final cost of the work.

Payments to the Architect, other than those on his fee, fall due from time to time as his work is done or as costs are incurred.

No deduction shall be made from the Architect's fee on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

7. THE OWNER'S DECISIONS.—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts, and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to contractors in due season.

8. SURVEY, BORINGS, AND TESTS.—The Owner shall

furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site, and full information as to sewer, water, gas, and electrical service. The Owner is to pay for borings or test pits and for chemical, mechanical, or other tests when required.

9. SUPERVISION OF THE WORK.—The Architect will endeavour to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works acceptable to both Owner and Architect shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner, upon presentation of the Architect's monthly certificates.

10. PRELIMINARY ESTIMATES.—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavour to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

11. DEFINITION OF THE COST OF THE WORK.—The words "the cost of the work" as used in Articles 2 and 6 hereof are ordinarily to be interpreted as meaning the total of the contract sums incurred for the execution of the work, not including Architect's and Engineer's fees, or the salary of the Clerk-of-the-Works, but in certain rare cases, e. g., when labour or material is furnished by the Owner below its market cost or when old materials are re-used, the cost

of the work is to be interpreted as the cost of all materials and labour necessary to complete the work, as such cost would have been if all materials had been new and if all labour had been fully paid at market prices current when the work was ordered, plus contractor's profits and expenses.

12. OWNERSHIP OF DOCUMENTS.—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

13. SUCCESSORS AND ASSIGNMENT.—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators, and assigns of such other party in respect of all the covenants of this agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

14. ARBITRATION.—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator



who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.



## ACQUIRING A HOME

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

In Presence of

\_\_\_\_\_ } as to \_\_\_\_\_  
 \_\_\_\_\_ }

\_\_\_\_\_ } as to \_\_\_\_\_  
 \_\_\_\_\_ }

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## A FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT

### ON THE FEE PLUS COST SYSTEM

Copyright 1917 by the American Institute  
of Architects, the Octagon, Washington, D. C.

THIS AGREEMENT made the \_\_\_\_\_ day of  
 \_\_\_\_\_ in the year Nineteen Hundred and  
 \_\_\_\_\_ by and between

hereinafter called the Owner, and

\_\_\_\_\_ hereinafter called the Architect

WITNESSETH, that whereas the Owner intends to erect

(Add here brief description of scope and manner of execution  
of work.)

Now, THEREFORE, the Owner and the Architect, for  
 the considerations hereinafter named, agree as follows:

The Architect agrees to perform for the above-named

work, professional services as stated in Article 1 of the "Conditions of Agreement between Owner and Architect" hereinafter set forth.

The Owner agrees to pay the Architect the sum of \_\_\_\_\_ dollars (\$) \_\_\_\_\_ as his fee, of which \_\_\_\_\_ dollars (\$) \_\_\_\_\_ is to be paid in \_\_\_\_\_ equal installments monthly, beginning \_\_\_\_\_, the balance to be paid on issuance of final certificate; and to reimburse the Architect monthly all costs incurred by him in the performance of his duties hereunder as more fully set forth in the said "Conditions."

The parties hereto further agree to the following:

## CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

**ARTICLE 1. THE ARCHITECT'S SERVICES.**—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large-scale and full-size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

**2. THE ARCHITECT'S FEE.**—The fee payable by the Owner to the Architect for his personal professional services shall be as named elsewhere in this Agreement.

In case of the abandonment or suspension of the work or of any part or parts thereof, the Architect is to be paid in proportion to the services rendered on account of it up to the time of its abandonment or suspension, such proportion being 20% upon completion of preliminary sketches and

60% upon completion of working drawings and specifications.

If the scope of the work or the manner of its execution is materially changed subsequent to the signing of the Agreement the fee shall be adjusted to fit the new conditions.

If additional personal service of the Architect is made necessary by the delinquency or insolvency of either the Owner or the Contractor, or as a result of damage by fire, he shall be equitably paid by the Owner for such extra service.

3. THE ARCHITECT'S COSTS.—The Architect shall maintain an efficient and accurate cost-keeping system as to all costs incurred by him, in connection with the subject of this agreement, and his accounts, at all reasonable times, shall be open to the inspection of the Owner or his authorized representatives.

The costs referred to in this Article comprise the following items:

(a) The sums paid for drafting, including verification of shop drawings, for specification writing and for supervision of the work.

(b) The sums paid to structural, mechanical, electrical, sanitary or other engineers.

(c) The sums paid for incidental expenses such as costs of transportation or living incurred by the Architect or his assistants while travelling in discharge of duties connected with the work, costs of reproducing drawings, printing or mimeographing the specifications, models, telegrams, long distance telephone calls, legal advice, expressage, etc.

(d) A proportion of the general expenses of the Architect's office, commonly called "Overhead," representing items that cannot be apportioned in detail to this work, such as rent, light, heat, stenographer's services, postage,

drafting materials, telephone, accounting, business administration, etc.

It is agreed that the charge for such general expenses shall be \_\_\_\_\_ per cent, of item (a) of this article.

4. PAYMENTS.—On or about the first day of each month the Architect shall present to the Owner a detailed statement of the payment due on account of the fee and the costs referred to in Article 3 and the Owner shall pay the Architect the amount thereof.

5. THE OWNER'S DECISIONS.—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to Contractors in due season.

6. SURVEY, BORINGS AND TESTS.—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, boundaries and contours of the building site, and full information as to sewer, water, gas and electrical service. The Owner is to pay for test borings or pits and for chemical, mechanical or other tests when required.

7. SUPERVISION OF THE WORK.—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an Architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works, acceptable to both Owner and Architect, shall be engaged



by the Architect at a salary satisfactory to the Owner and paid by the Owner.

8. PRELIMINARY ESTIMATES.—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavour to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

9. OWNERSHIP OF DOCUMENTS.—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

10. SUCCESSORS AND ASSIGNMENT.—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators, and assigns of such other party in respect of all the covenants of this Agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it, shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

11. ARBITRATION.—All questions in dispute under this



agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein,

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

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## THE STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER \*

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS  
FOR USE WHEN A STIPULATED SUM FORMS  
THE BASIS OF PAYMENT

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers Association of the City of New York, and the Heating and Piping Contractors National Association.

Third Edition, Copyright 1915-1918 by the American Institute of Architects, the Octagon, Washington, D. C. This Form is to be Used only with the Standard General Conditions of the Contract

THIS AGREEMENT made the                      day of  
in the year Nineteen Hundred and  
by and between

hereinafter called the Contractor, and

hereinafter called the Owner,  
WITNESSETH, that the Contractor and the Owner for the  
considerations hereinafter named agree as follows:

ARTICLE 1. The Contractor agrees to provide all the materials and to perform all the work shown on the drawings and described in the Specifications entitled

(Here insert the caption descriptive of the work as used in the Proposal, General Conditions, Specifications, and upon the Drawings.)

prepared by

acting as, in these Contract Documents entitled the Architect, and to do everything required by the General Conditions of the Contract, the Specifications and the Drawings.

ARTICLE 2. The Contractor agrees that the work under this Contract shall be substantially completed

(Here insert the date or dates of completion, and stipulations as to liquidated damages, if any.)

ARTICLE 3. The Owner agrees to pay the Contractor in current funds for the performance of the Contract

( \$ ) subject  
to additions and deductions as provided in the General Conditions of the Contract and to make payments on account thereof as provided therein, as follows:

On or about the                      day of each month  
per cent of the value, proportionate to the amount of the Contract, of labor and materials incorporated in the work  
up to the first day  
of that month as estimated by the Architect, less the aggre-

gate of previous payments. On substantial completion of the entire work, a sum sufficient to increase the total payments to \_\_\_\_\_ per cent of the contract price, and \_\_\_\_\_ days thereafter, provided the work be fully completed and the Contract fully performed, the balance due under the Contract.

ARTICLE 4. The Contractor and the Owner agree that the General Conditions of the Contract, the Specifications and the Drawings, together with this Agreement, form the Contract, and that they are as fully a part of the Contract, as if hereto attached or herein repeated; and that the following is an exact enumeration of the Specifications and Drawings:

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained. IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

\* \* \* \*

## A FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER

Issued by the American Institute of Architects for Use when the Cost of the Work Plus a Fee Forms the Basis of Payment.

First Edition—Copyright 1920 by the American Institute of Architects, Washington, D. C.

This Form is to be Used only with the Institute's Standard General Conditions of the Contract, and it Should not be

Used without Careful Study of its Accompanying "Circular of Information."

THIS AGREEMENT made the                      day of  
in the year Nineteen Hundred and  
by and between

hereinafter called the Contractor, and

hereinafter called the Owner,  
WITNESSETH, that whereas the Owner intends to erect

NOW, THEREFORE, the Contractor and the Owner, for  
the considerations hereinafter named, agree as follows:

ARTICLE I. THE WORK TO BE DONE AND THE  
DOCUMENTS FORMING THE CONTRACT.

The Contractor agrees to provide all the labour and  
materials and to do all things necessary for the proper  
construction and completion of the work shown and de-  
scribed on Drawings bearing the title  
and numbered  
and in Specifications bearing the same title, the pages of  
which are numbered

The said Drawings and Specifications and the General  
Conditions of the Contract consisting of Articles numbered  
one to  
together with this Agreement, constitute the Contract; the  
Drawings, Specifications and General Conditions being as  
fully a part thereof and hereof as if hereto attached or  
herein repeated. If anything in the said General Condi-



tions is inconsistent with this Agreement, the Agreement shall govern.

The said documents have been prepared by

therein and hereinafter called the Architect.

#### ARTICLE 2. CHANGES IN THE WORK.

The Owner, through the Architect, may from time to time, by written instructions or drawings issued to the Contractor, make changes in the above-named Drawings and Specifications, issue additional instructions, require additional work or direct the omission of work previously ordered, and the provisions of this contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original Drawings and Specifications. Since the cost of all such changes is to merge in the final cost of the work, Articles 24 and 25 of the General Conditions of the Contract are annulled, unless elsewhere especially made applicable.

#### ARTICLE 3. THE CONTRACTOR'S DUTIES AND STATUS.

The Contractor recognizes the relations of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to co-operate with the Architect in forwarding the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use every effort to keep upon the work at all times an adequate supply of workmen and materials, and to secure its execution in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

## ARTICLE 4. FEE FOR SERVICES.

In consideration of the performance of the contract, the Owner agrees to pay the Contractor, in current funds, as compensation for his services hereunder

(\$ )

which shall be paid as follows:

## ARTICLE 5. COSTS TO BE REIMBURSED.

The Owner agrees to reimburse the Contractor in current funds all costs necessarily incurred for the proper prosecution of the work and paid directly by the Contractor, such costs to include the following items, and to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner:

(a) All labor directly on the Contractor's pay roll.

(b) Salaries of Contractor's Employés stationed at the field office, in whatever capacity employed. Employés engaged, at shops or on the road, in expediting the production or transportation of material, shall be considered as stationed at the field office and their salaries paid for such part of their time as is employed on this work.

(c) The proportion of transportation, travelling and hotel expenses of the Contractor or of his officers or employés incurred in discharge of duties connected with this work.

(d) All expenses incurred for transportation to and from the work of the force required for its prosecution.

(e) Permit fees, royalties, damages for infringement of patents, and costs of defending suits therefor and for deposits lost for causes other than the Contractor's negligence.

(f) Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connec-

tion with the work, provided they have resulted from causes other than the fault or neglect of the Contractor. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses and expenses shall be included in the cost of the work for the purpose of determining the Contractor's fee, but if, after a loss from fire, flood or similar cause not due to the fault or neglect of the Contractor, he be put in charge of reconstruction, he shall be paid for his services a fee proportionate to that named in Article 4 hereof.

(g) Minor expenses, such as telegrams, telephone service, expressage, and similar petty cash items.

(h) Cost of hand tools, not owned by the workmen, canvas and tarpaulins, consumed in the prosecution of the work, and depreciation on such tools, canvas and tarpaulins used but not consumed and which shall remain the property of the Contractor.

#### ARTICLE 6. COSTS NOT TO BE REIMBURSED.

Reimbursement of expenses to the Contractor shall not include any of the following:

(a) Salary of the Contractor, if an individual, or salary of any member of the Contractor, if a firm, or salary of any officer of the Contractor, if a corporation.

(b) Salary of any person employed, during the execution of the work, in the main office or in any regularly established branch office of the Contractor.

(c) Overhead or general expenses of any kind, except as these may be expressly included in Article 5.

(d) Interest on capital employed either in plant or in expenditures on the work, except as may be expressly included in Article 5.

**ARTICLE 7. COSTS TO BE PAID DIRECT BY THE OWNER.**

In addition to items of cost noted in Article 5 for which the Owner reimburses the Contractor, the Owner shall pay all costs as follows:

(a) Materials, supplies, equipment and transportation required for the proper execution of the work, which shall include all temporary structures and their maintenance; all such costs to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner.

(b) The amounts of all separate contracts.

(c) Premiums on all bonds and insurance policies called for under Articles 19, 20, 21 and 22 of the General Conditions of the Contract.

(d) Rentals of all construction plant or parts thereof, whether rented from the Contractor or others, in accordance with rental agreements approved by the Architect. Transportation of said construction plant, costs of loading and unloading, cost of installation, dismantling and removal thereof and minor repairs and replacements during its use on the work,—all in accordance with the terms of the said rental agreements.

**ARTICLE 8. DISCOUNTS, REBATES, REFUNDS.**

All discounts, rebates and refunds, and all returns from sale of surplus materials, equipment, etc., shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

**ARTICLE 9. CONTRACTOR'S FINANCIAL RESPONSIBILITY.**

Any cost due to the negligence of the Contractor or any one directly employed by him, either for the making good of defective work, disposal of material wrongly supplied, making good of damage to property, or excess costs



for material or labour, or otherwise, shall be borne by the Contractor, and the Owner may withhold money due the Contractor to cover any such cost already paid by him as part of the cost of the work.

This article supersedes the provisions of Articles 13, 14 and 16 of the General Conditions of the Contract so far as they are inconsistent herewith.

#### ARTICLE 10. SEPARATE CONTRACTS.

All portions of the work that the Contractor's organization has not been accustomed to perform or that the Owner may direct, shall be executed under separate contracts let by the Owner direct. In such cases either the Contractor shall ask for bids from contractors approved by the Architect and shall deliver such bids to him, or the Architect shall procure such bids himself, and in either case the Architect shall determine, with the advice of the Contractor and subject to the approval of the Owner, the award and amount of the accepted bid. The Owner shall contract for such work direct with such approved bidders in accordance with the terms of this agreement and the General Conditions of the Contract, which Conditions shall, for the purposes of such contracts, stand as printed or written and not be subject to the modifications set forth herein.

The Contractor, being fully responsible for the general management of the building operation, shall have full directing authority over the execution of the separate contracts.

The separate Contractors shall not only co-operate with each other, as provided in Article 41 of the General Conditions of the Contract, but they shall conform to all directions of the Contractor in regard to the progress of the work.



## ARTICLE 11. TITLE TO THE WORK.

The title of all work completed and in course of construction and of all materials on account of which any payment has been made, and materials to be paid for under Article 7, shall be in the Owner.

## ARTICLE 12. ACCOUNTING, INSPECTION, AUDIT.

The Contractor shall check all material and labour entering into the work and shall keep such full and detailed accounts as may be necessary to proper financial management under this Agreement and the system shall be such as is satisfactory to the Architect or to an auditor appointed by the Owner. The Architect, the auditor and their time-keepers and clerks shall be afforded access to the work and to all the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, memoranda, etc., relating to this contract, and the Contractor shall preserve all such records for a period of two years after the final payment hereunder.

## ARTICLE 13. APPLICATIONS FOR PAYMENT.

The Contractor shall, between the first and seventh of each month, deliver to the Architect a statement, sworn to if required, showing in detail and as completely as possible all moneys paid out by him on account of the cost of the work during the previous month for which he is to be reimbursed under Article 5 hereof, with original pay rolls for labour, checked and approved by a person satisfactory to the Architect, and all receipted bills.

He shall at the same time submit to the Architect a complete statement of all moneys properly due for materials or on account of separate contracts, or on account of his fee, or otherwise, which are to be paid direct by the Owner under Article 7 hereof.

The provisions of this Article supersede those of Article 26 of the General Conditions of the Contract.

#### ARTICLE 14. CERTIFICATES OF PAYMENT.

The Architect shall check the Contractor's statements of moneys due, called for in Article 13, and shall promptly issue certificates to the Owner for all such as he approves, which certificates shall be payable on issuance.

The provisions of this Article supersede the first paragraph of Article 27 of the General Conditions of the Contract.

#### ARTICLE 15. DISBURSEMENTS.

Should the Contractor neglect or refuse to pay, within five days after it falls due, any bill legitimately incurred by him hereunder (and for which he is to be reimbursed under Article 5) the Owner, after giving the Contractor twenty-four hours' written notice of his intention so to do, shall have the right to pay such bill directly, in which event such payment shall not, for the purpose either of reimbursement or of calculating the Contractor's fee, be included in the cost of the work.

#### ARTICLE 16. TERMINATION OF CONTRACT.

*(The provisions of this Article supersede all of Article 37 of the General Conditions of the Contract except the first sentence.)*

If the Owner should terminate the contract under the first sentence of Article 37 of the General Conditions of the Contract, he shall reimburse the Contractor for the balance of all payments made by him under Article 5, plus a fee computed upon the cost of the work to date at the rate of percentage named in Article 4 hereof, or if the Contractor's fee be stated as a fixed sum, the Owner shall pay the Contractor such an amount as will increase the

payments on account of his fee to a sum which bears the same ratio to the said fixed sum as the cost of the work at the time of termination bears to a reasonable estimated cost of the work completed, and the Owner shall also pay to the Contractor fair compensation, either by purchase or rental, at the election of the Owner, for any equipment retained. In case of such termination of the contract the Owner shall further assume and become liable for all obligations, commitments and unliquidated claims that the Contractor may have theretofore, in good faith, undertaken or incurred in connection with said work and the Contractor shall, as a condition of receiving the payments mentioned in this Article, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments.

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement the day and year first above written.

✻   ✻   ✻   ✻

## THE GENERAL CONDITIONS OF THE CONTRACT \*

### STANDARD FORM OF THE AMERICAN INSTITUTE OF ARCHITECTS

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers,

\* Third Edition, 1918

the Building Granite Quarries Association, the Building Trades Employers Association of the City of New York, and the Heating and Piping Contractors National Association.

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#### ARTICLE I. PRINCIPLES AND DEFINITIONS.—

- (a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.



- (b) The Owner, the Contractor and the Architect are those named as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.
- (c) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- (d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- (e) The term "work" of the Contractor or Subcontractor includes labour or materials or both.
- (f) All time limits stated in the Contract Documents are of the essence of the contract.
- (g) The law of the place of building shall govern the construction of this contract.

ART. 2. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS.—The Contract Documents shall be signed in duplicate by the Owner and Contractor. In case of failure to sign the General Conditions, Drawings or Specifications the Architect shall identify them.

The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all. The intention of the documents is to include all labour and materials reasonably necessary for the proper execution of the work. It is not intended however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall



be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

ART. 3. DETAIL DRAWINGS AND INSTRUCTIONS.—The Architect shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. In giving such additional instructions, the Architect shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the building.

The Contractor and the Architect, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

ART. 4. COPIES FURNISHED.—Unless otherwise provided in the Contract Documents the Architect will furnish to the Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.

ART. 5. SHOP DRAWINGS.—The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other contractor, two copies of all shop or setting drawings and schedules required for

the work of the various trades and the Architect shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Architect, file with him two corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Architect's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

ART. 6. DRAWINGS AND SPECIFICATIONS OF THE WORK.—The Contractor shall keep one copy of all drawings and specifications on the work, in good order, available to the Architect and to his representatives.

ART. 7. OWNERSHIP OF DRAWINGS AND MODELS.—All drawings, specifications and copies thereof furnished by the Architect are his property. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

ART. 8. SAMPLES.—The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

ART. 9. THE ARCHITECT'S STATUS.—The Architect shall have general supervision and direction of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

As the Architect is, in the first instance, the inter-

preter of the conditions of the Contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the contract to enforce its faithful performance by both.

In case of the termination of the employment of the Architect, the Owner shall appoint a capable and reputable Architect whose status under the contract shall be that of the former Architect.

ART. 10. THE ARCHITECT'S DECISION.—The Architect shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

The Architect's decisions, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

Except as above or as otherwise expressly provided in these General Conditions or in the specifications, all the Architect's decisions are subject to arbitration.

ART. 11. FOREMAN, SUPERVISION.—The Contractor shall keep on his work, during its progress, a competent foreman and any necessary assistants, all satisfactory to the Architect. The foreman shall not be changed except with the consent of the Architect, unless the foreman proves to be unsatisfactory to the Contractor and ceases to be in his employ. The foreman shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect

any error, inconsistency or omission which he may discover.

ART. 12. MATERIALS, APPLIANCES, EMPLOYEES.—Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labour, water, tools, equipment, light and power necessary for the execution of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

ART. 13. INSPECTION OF WORK.—The Owner, the Architect and their representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Architect's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by another authority than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be promptly made. If any such work should be covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Architect. If such work be found in accordance with the contract, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract, through the fault of the Contractor, the Contractor shall pay such cost, unless he shall show that the



defect in the work was caused by another contractor, and in that event the Owner shall pay such cost.

**ART. 14. CORRECTION OF WORK BEFORE FINAL PAYMENT.**—The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five days thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

**ART. 15. DEDUCTIONS FOR UNCORRECTED WORK.**—If the Architect and Owner deem it inexpedient to correct work injured or done not in accordance with the Contract, the difference in value together with a fair allowance for damage shall be deducted.

**ART. 16. CORRECTION OF WORK AFTER FINAL PAYMENT.**—Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of two years from the time of in-



stallation. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided under Articles 10 and 45.

ART. 17. PROTECTION OF WORK AND PROPERTY.—The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury arising in connection with this Contract. He shall make good any such damage or injury, except such as may be directly due to errors in the Contract Documents. He shall adequately protect adjacent property as provided by law and the Contract Documents.

ART. 18. EMERGENCIES.—In an emergency affecting the safety of life or of the structure or of adjoining property, not considered by the Contractor as within the provisions of Article 17, then the Contractor, without special instruction or authorization from the Architect or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed to be due to him therefor shall be determined under Articles 10 and 45 regardless of the limitations in Article 25 and in the second paragraph of Article 24.

ART. 19. CONTRACTOR'S LIABILITY INSURANCE.—The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Owner, if he so desire, and shall be subject to his approval for adequacy of protection.

ART. 20. OWNER'S LIABILITY INSURANCE.—The

Owner shall maintain such insurance as will protect him from his contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

ART. 21. FIRE INSURANCE.—The Owner shall effect and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent thereto and intended for use thereon, to at least eighty per cent of the insurable value thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

All policies shall be open to inspection by the Contractor. If the Owner fails to show them on request or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance, he may recover under Art. 39.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being in accordance with Art. 45. If after loss no special agreement is made, replacement of injured work shall be ordered under Art. 24.

The Trustee shall have power to adjust and settle any loss with the insurers unless one of the contractors interested shall object in writing within three working days of the occurrence of loss and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with

the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

ART. 22. GUARANTY BONDS.—The Owner shall have the right to require the Contractor to furnish bond covering the faithful performance of the contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as he may approve. If such bond is required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

ART. 23. CASH ALLOWANCES.—The Contractor shall include in the contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such contractors and for such sums as the Architect may direct, the contract sum being adjusted in conformity therewith. The Contractor declares that the contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has a reasonable objection.

ART. 24. CHANGES IN THE WORK.—The Owner, without invalidating the contract, may make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

Except as provided in Articles 3, 9 and 18, no change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Architect, or a written

order from the Architect stating that the Owner has authorized the change, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.
- (d) If none of the above methods is agreed upon, the Contractor, provided he receive an order as above, shall proceed with the work, no appeal to arbitration being allowed from such order to proceed.

In cases (c) and (d), the Contractor shall keep and present in such form as the Architect may direct, a correct account of the net cost of labour and materials, together with vouchers. In any case, the Architect shall certify to the amount, including a reasonable profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

**ART. 25. CLAIMS FOR EXTRAS.**—If the Contractor claims that any instructions, by drawings or otherwise, involve extra cost under this contract, he shall give the Architect written notice thereof before proceeding to execute the work and, in any event, within two weeks of receiving such instructions, and the procedure shall then be as provided in Art. 24. No such claim shall be valid unless so made.

**ART. 26. APPLICATIONS FOR PAYMENTS.**—The Contractor shall submit to the Architect an application for each payment and, if required, receipts or other vouchers showing his payments for materials and labour, including payments to subcontractors as required by Article 44.

If payments are made on valuation of work done, such



application shall be submitted at least ten days before each payment falls due, and, if required, the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided so as to facilitate payments to subcontractors in accordance with Article 44 (e), made out in such form and, if required, supported by such evidence as to its correctness, as the Architect may direct. This schedule when approved by the Architect, shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule and, if required, itemized in such form and supported by such evidence as the Architect may direct, showing his right to the payment claimed.

ART. 27. CERTIFICATES AND PAYMENTS.—If the Contractor has made application as above, the Architect shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as he decides to be properly due.

No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner shall be an acceptance of any work or materials not in accordance with this contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, otherwise than under Articles 16 and 29 of these conditions or under requirement of the specifications, and of all claims by the Contractor, except those previously made and still unsettled.

Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in the certificate, interest thereon at the legal rate in force at the place of building.

ART. 28. PAYMENTS WITHHELD.—The Architect



may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labour.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor under Article 40.

When all the above grounds are removed certificates shall at once be issued for amounts withheld because of them.

ART. 29. LIENS.—Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labour and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any claim by lien or otherwise. If any lien or claim remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

ART. 30. PERMITS AND REGULATIONS.—The Contractor shall obtain and pay for all permits and licenses, but not permanent easements, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and

specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted under Article 24. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

ART. 31. ROYALTIES AND PATENTS.—The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Architect or Owner.

ART. 32. USE OF PREMISES.—The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Architect and shall not unreasonably encumber the premises with his materials.

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

ART. 33. CLEANING UP.—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and

charge the cost to the several contractors as the Architect shall determine to be just.

ART. 34. CUTTING, PATCHING AND DIGGING.—The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure and he shall make good after them, as the Architect may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent of the Architect.

ART. 35. DELAYS.—If the Contractor be delayed in the completion of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any other contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect. In the case of a continuing cause of delay, only one claim is necessary.

If no schedule is made under Art. 3, no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of damages

for delay by either party under Article 39 or other provisions in the contract documents.

ART. 36. OWNER'S RIGHT TO DO WORK.—If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Architect shall approve both such action and the amount charged to the Contractor.

ART. 37. OWNER'S RIGHT TO TERMINATE CONTRACT.—If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should, except in cases recited in Article 35, persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labour, or persistently disregard laws, ordinances or the instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation to the Architect for his additional services, such excess shall be paid to the Contractor. If such expense shall



exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect.

ART. 38. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT.—If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor, within seven days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon three days' written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages.

ART. 39. DAMAGES.—If either party to this contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage.

Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except in case of claims under Article 16, and shall be adjusted by agreement or arbitration.

ART. 40. MUTUAL RESPONSIBILITY OF CONTRACTORS.—Should the Contractor cause damage to any other contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement or arbitration, if he will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense



and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

ART. 41. SEPARATE CONTRACTS.—The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and co-ordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

ART. 42. ASSIGNMENT.—Neither party to the Contract shall assign the contract without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

ART. 43. SUBCONTRACTS.—The Contractor shall, as soon as practicable after the signature of the contract, notify the Architect in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect may within a reasonable time object to as incompetent or unfit.

If the Contractor has submitted before signing the contract a list of subcontractors and the change of any name on such list is required or permitted after signature of agreement, the contract price shall be increased or diminished by the difference between the two bids.

The Architect shall, on request, furnish to any subcontractor, wherever practicable, evidence of the amounts certified to on his account.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Owner.

ART. 44. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR.—The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound, by the terms of the General Conditions, Drawings and Specifications, as far as applicable to his work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. This does not apply to minor subcontracts.

The Subcontractor agrees—

- (a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.
- (b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 26 of the General Conditions.

- (c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions is one week.

The Contractor agrees—

- (d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.
- (e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.
- (f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
- (g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.
- (h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to

issue it for any cause not the fault of the Subcontractor.

- (j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.
- (k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
- (l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.
- (m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.
- (n) To name as arbitrator under Article 45 of the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

- (o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor.

ART. 45. ARBITRATION.—Subject to the provisions of Article 10, all questions in dispute under this contract shall be submitted to arbitration at the choice of either party to



the dispute. The Contractor agrees to push the work vigorously during arbitration proceedings.

The demand for arbitration shall be filed in writing with the Architect, in the case of an appeal from his decision, within ten days of its receipt and in any other case within a reasonable time after cause thereof and in no case later than the time of final payment, except as to questions arising under Article 16. If the Architect fails to make a decision within a reasonable time, an appeal to arbitration may be taken as if his decision had been rendered against the party appealing.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either the Owner, Contractor or Architect.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named, in writing, by each party to this contract, to the other party and to the Architect, and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three the decision of any two shall be binding. Such decision shall



be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense and trouble incident to the appeal and, if the appeal was taken without reasonable cause, damages for delay. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

In the event of such laws providing on any matter covered by this article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accordance with the said State laws, it being intended hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the place in which the work is to be erected.







